

2020 South Dakota Legislature

House Bill 1012

AMENDMENT 1012E FOR THE INTRODUCED BILL

1 **An Act to correct technical errors in statutory cross-references.**

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

3 **Section 1.** That § 1-14-1 be AMENDED:

4 **1-14-1. Continuation of bureau--Department of Executive Management--**
5 **Central office location.**

6 The Bureau of Administration shall continue within the Department of Executive
7 Management, and all its functions shall be performed by the Department of Executive
8 Management ~~as provided by § 1-33-6.~~

9 The bureau shall maintain a central office in Pierre which shall be the official address
10 of the bureau and the place for serving process or papers of any kind upon it.

11 **Section 2.** That § 1-33B-2 be AMENDED:

12 **1-33B-2. Energy conservation measure defined--Inclusions--Limitation.**

13 For the purposes of this chapter, the term, energy conservation measure, means
14 a training program or facility alteration intended to reduce either energy consumption or
15 operating costs, or both, or increase operating revenues through the generation of energy,
16 renewable energy, or improved metering technology, including the following:

- 17 (1) Insulation of the building or any structure associated with the building;
18 (2) Window or door replacement, weather stripping, or modifications that reduce
19 energy consumption;
20 (3) Automated or computerized energy control systems;
21 (4) Replacement or modification to increase the energy efficiency of the lighting,
22 heating, air conditioning, or ventilating systems;
23 (5) Energy recovery or cogeneration systems;
24 (6) Repair or maintenance items, when included in energy efficiency improvements of

1 the building, if overall measures meet the fifteen-year payback as provided in ~~§ 1-~~
2 ~~33B-7~~ § 1-33B-8;

3 (7) Energy source conversions which provide either operational or energy cost savings,
4 or both; and

5 (8) Other energy or utility-related improvements in facilities, systems, or technology
6 that improve energy or metering efficiency or increase operating revenues through
7 the generation of energy, renewable energy, or improved metering technology.

8 Nothing in this section addresses the relationship between an electric utility and its
9 customer under a proposed energy exchange contract, where the customer seeks status
10 as a qualifying facility under the Public Utility Regulatory Policies Act of 1978, as defined
11 by 18 CFR Part 292, Subpart B, as it existed on January 1, 2005.

12 **Section 3.** That § 1-40-20.1 be AMENDED:

13 **1-40-20.1. Water Management Board--Functions transferred.**

14 The functions of the Water Management Board ~~pursuant to §§ 34A-2-86 and 34A-~~
15 ~~2-87~~, relating to water pollution control grants, community water systems grants, and
16 lake protection grants, respectively, are transferred to the Board of Water and Natural
17 Resources.

18 **Section 4.** That § 1-45-27.1 be AMENDED:

19 **1-45-27.1. Education and Cultural Affairs Planning Commission--Functions**
20 **transferred.**

21 The functions of the Education and Cultural Affairs Planning Commission ~~created~~
22 ~~by § 1-45-27~~ are transferred to the secretary of education.

23 **Section 5.** That § 3-22-5 be AMENDED:

24 **3-22-5. Bureau of Administration--Powers.**

25 The bureau may:

- 26 (1) Select a director who shall serve at the pleasure of the bureau;
27 (2) Enter contracts for actuarial determinations, claims adjustment and investigation,
28 loss control and risk management, legal services, or other services the director
29 determines to be necessary to carry out the purposes of this chapter;
30 (3) Enter contracts for insurance and reinsurance the director determines to be
31 necessary to carry out the purposes of this chapter. Any such contract is not subject

- 1 to the provisions of chapters 5-18A and ~~5-18-D~~ 5-18D;
- 2 (4) Develop a coverage document, agreed to by the director and the Governor, to
- 3 establish the type and scope of covered claims, limits of coverage, terms and
- 4 conditions of coverage, and costs of coverage; and
- 5 (5) Based on annual actuarial calculations, impose and collect contributions from
- 6 covered state entities for the estimated amount necessary to extend coverage and
- 7 maintain appropriate reserves for covered claims.

8 **Section 6.** That § 4-7-2 be AMENDED:

9 **4-7-2. Bureau of Finance and Management continued--Functions performed--**

10 **-Purpose.**

11 The Bureau of Finance and Management is hereby continued within the Department

12 of Executive Management, for the purpose of promoting economy and efficiency in the

13 fiscal management of the state government. All its functions shall be performed by the

14 Department of Executive Management ~~as provided by § 1-33-6.~~

15 **Section 7.** That § 4-8A-17 be AMENDED:

16 **4-8A-17. Legislative priority pilot program contingency fund created.**

17 On June 29, 2015, the state treasurer shall transfer to the legislative priority pilot

18 program contingency fund, which is hereby created, the sum of one million dollars

19 (\$1,000,000) from the South Dakota risk pool fund ~~created by § 58-17-120.~~ The

20 contingency funds are to be made available in accordance with the provisions of §§ 4-8A-

21 9, 4-8A-10, 4-8A-11, and 4-8A-12. The contingency funds shall be used to fund legislative

22 priority pilot programs. Interest earned on money in the fund shall be deposited into the

23 general fund.

24 **Section 8.** That § 5-6-13 be AMENDED:

25 **5-6-13. Amount of forest products determined--State forester.**

26 The commissioner of school and public lands may authorize the state forester to

27 determine the amount of forest products to be harvested from school and endowment

28 lands ~~in accordance with § 41-20-8.~~

29 **Section 9.** That § 5-18A-24 be AMENDED:

1 **5-18A-24. Grade A milk processors--Competitive bid contracts.**

2 Any milk processor ~~licensed pursuant to § 39-6-7, for Grade A milk that is bidding~~
3 any milk or milk product under a competitive bid contract, shall receive the bid contract if
4 the processor's bid is equal to, or within five percent or less, of any other bidder who is
5 not a licensed processor.

6 **Section 10.** That § 7-12-17 be AMENDED:

7 **7-12-17. Mileage and food costs--Reimbursement--Deductions.**

8 Nothing in § 7-12-15 ~~or 7-12-16, however,~~ shall be construed to change the
9 reimbursement of the sheriff for costs of mileage incurred while on official business nor to
10 change the fee received by the sheriff for the costs of food for boarding of prisoners. In
11 the event that housing and utilities are furnished by a county to the sheriff, the county
12 board of commissioners is authorized to establish a reasonable value for such quarters,
13 based upon the general level of housing accommodation rentals prevailing at the county
14 seat, and to deduct from the regular salary of the sheriff an equivalent amount therefor.

15 **Section 11.** That § 7-20-12 be AMENDED:

16 **7-20-12. Removal from office--Cause.**

17 Any county officer neglecting or refusing to comply with the provisions of §§ 7-20-
18 1 ~~to 7-20-11, inclusive, through 7-20-10~~ is subject to removal from office. No county
19 treasurer is liable on the county treasurer's official bond for any loss of money deposited
20 in compliance with the provisions of these sections.

21 **Section 12.** That § 9-3-26 be AMENDED:

22 **9-3-26. State or local tax funds--Prohibition--Exception.**

23 Such municipality shall not be authorized to receive any state or local tax funds or
24 any distribution from either state or local sources except such as are specifically provided
25 under ~~§§ 7-18-11 and 7-18-12, or any amendments thereto~~ § 7-18-12 or similar laws
26 hereafter enacted, for tourist, educational, and recreational activities.

27 **Section 13.** That § 9-38-90 be AMENDED:

28 **9-38-90. City attorney--Duties--Recreation board--Special counsel.**

29 The city attorney as a part of his duties shall conduct all court proceedings under
30 ~~§§ 9-38-79 to 9-38-106, inclusive~~ §§ 9-38-80 through 9-38-106, and shall be the legal

adviser of the recreation board. When in its judgment the interests of the first or second class municipality demand, the recreation board may employ special counsel to assist the city attorney.

Section 14. That § 9-41A-48 be AMENDED:

9-41A-48. Encumbrance of property to secure bonds and notes--Filings.

For the security of bonds or notes issued, or to be issued, by a municipal power agency, the municipal power agency may mortgage or execute deeds of trust of the whole or any part of its property and franchises in the same manner and with the same effect as provided for public utilities in § 49-34-9. Any mortgage or deed of trust and any assignment or discharge thereof shall be filed and recorded in the Office of the Secretary of State with the same force and effect as provided in §§ 49-34-11 and 49-34-12. All filings required under the Uniform Commercial Code to perfect a security interest against the personal property or fixtures of a municipal power agency shall be made and maintained in the Office of the Secretary of State, with the same force and effect as provided in the case of for a debtor public utility under the provisions of §§ 57A-9-403.1 to 57A-9-403.5, inclusive.

Section 15. That § 9-51-23 be AMENDED:

9-51-23. Net revenues pledged to payment of special obligation bonds--

Additional covenants authorized.

Bonds authorized and issued under §§ 9-51-22 to ~~9-51-29, inclusive, through 9-51-28~~ may be made payable as to both principal and interest out of the net revenues or moneys levied and appropriated as set forth in § 9-51-14, provided that in the ordinance authorizing such bonds the governing body may on behalf of the municipality make any or all of the irrevocable covenants in §§ 9-51-24 to ~~through 9-51-28, inclusive,~~ with and for the benefit of the holders from time to time of said bonds.

~~Section 16. That § 10-4-33 be AMENDED:~~

~~10-4-33. Property used as employee day-care cooperative exempt--Determining value.~~

~~The board of county commissioners may exempt from taxation property used as an a licensed employee day-care cooperative which is licensed pursuant to § 26-6-31. Property used by the employees of a business exclusively for a licensed day-care cooperative licensed pursuant to § 26-6-31, may be exempt from taxation. For the purposes of determining the value of the~~

~~taxable portion of the property, the appraised value of the entire property shall be multiplied by the percentage of the entire property used for other than day-care purposes.~~

Section 16. That § 10-4-33 be REPEALED.

**10-4-33. Property used as employee day-care cooperative exempt--
Determining value.**

Section 17. That § 10-4-34 be AMENDED:

~~10-4-34. Exemption of property used for storing and dispensing alternative fuels.~~

~~The board of county commissioners may exempt from ad valorem taxation equipment, buildings, and structures attached to real property and used exclusively for the storing, dispensing, and retail sale of alternative fuels as defined by § 10-47A-1, for the operation of motor vehicles for a period of five years from the date of construction.~~

Section 17. That § 10-6-33.35 be AMENDED:

**10-6-33.35. Agricultural Land Assessment Implementation and Oversight
Advisory Task Force.**

~~(1)~~ There is hereby established the Agricultural Land Assessment Implementation and Oversight Advisory Task Force. The task force shall consist of the following fourteen members:

~~(1)(a)~~ The speaker of the House of Representatives shall appoint four members of the House of Representatives, no more than two of whom may be from one political party;

~~(2)(b)~~ The speaker of the House of Representatives shall appoint three members of the general public, at least one of the members shall have an agricultural background and at least one of the members shall have a business background;

~~(3)(c)~~ The president pro tempore of the Senate shall appoint four members of the Senate, no more than two of whom may be from one political party; and

~~(4)(d)~~ The president pro tempore of the Senate shall appoint three members of the general public, at least one of the members shall have an agricultural background and at least one of the members shall have a business background.

~~(2)~~ The initial appointments shall be made no later than July 1, 2008, and shall serve until January 12, 2009. The speaker of the House of Representatives and president pro tempore of the Senate before the close of each regular session of the Legislature held in odd-numbered years shall appoint members to the task force for a term of two years. If there is a vacancy on the task force, the vacancy shall be filled in the same manner as the original appointment.

~~(3)~~ The task force shall advise the department regarding the rules promulgated by the department to administer the provisions concerning the assessment and taxation of agricultural lands and shall review the implementation of the provisions of law concerning the assessment and taxation of agricultural land. The task force shall report to the Senate and House of Representatives and may submit a copy of its report to the Governor. The task force may present draft legislation and policy recommendations to the Legislative Research Council Executive Board.

~~(4)~~ The task force shall make recommendations in the following areas:

(1)~~(a)~~ The proper percentage of annual earning capacity to be used to determine the agricultural income value pursuant to § 10-6-33.28;

(2)~~(b)~~ The proper capitalization rate in order to have total taxable valuation for the taxes payable in 2011 from agricultural property be not more than total taxable valuation for the taxes payable in 2010 from agricultural property plus the estimated growth in agricultural property value in 2010;

(3)~~(c)~~ The changes, if any, that must be made to §§ ~~13-10-6~~, 13-16-7, 13-37-16, and 13-37-35.1 to ensure that the total amount of additional taxes that may be generated on agricultural land by a school district pursuant to the provisions of §§ ~~13-10-6~~, 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue increase for the school district pursuant to the implementation of the productivity system pursuant to §§ 10-6-33.28 to 10-6-33.33, inclusive;

(4)~~(d)~~ The changes, if any, that must be made to §§ ~~13-10-6~~, 13-16-7, 13-37-16, and 13-37-35.1 to ensure that the total amount of property taxes that may be lost on agricultural land by a school district pursuant to the provisions of §§ ~~13-10-6~~, 13-16-7, 13-37-16, and 13-37-35.1 will not provide a substantial property tax revenue decrease for the school district pursuant to the implementation of the productivity system pursuant to §§ 10-6-33.28 to 10-6-33.33, inclusive; and

(5)(e) The distribution of the local effort for the general fund of school districts between the classifications of real property as provided by § 13-13-72.1 which establishes the real property tax contribution from agricultural property for the general fund of school districts as a fixed ratio of the total local effort for such levies. The task force shall also consider the other taxes paid by agricultural property, the relationship of the total assessed value of agricultural property to the total assessed value of all real property, and other factors the task force deems appropriate.

Section 18. That § 10-6-35.20 be AMENDED:

~~10-6-35.20. Property tax assessment credit.~~

~~An owner of real property is entitled to a property tax assessment credit for a renewable energy resource system that produces ethyl alcohol for use as fuel. Such fuel may be consumed anywhere subject to the limitation provided for in § 10-6-35.10.~~

Section 18. That § 10-10-13 be AMENDED:

10-10-13. Appeal from state or county board.

Any appeal under ~~§§ 10-10-11 and 10-10-12~~ § 10-10-11 must be taken within thirty days after the filing of the decision in the office of the board making the same.

Section 19. That § 10-11-26 be AMENDED:

10-11-26. County board of equalization--Powers--De novo appeals.

A county board of equalization has all the power and authority of a local board of equalization in all unorganized territories. A county board of equalization may:

(1) ~~Make adjustments and corrections pursuant to § 10-11-61;~~

~~(2)~~ Correct clerical errors of the assessment roll;

~~(3)~~ (2) Hear appeals from individuals regarding aggregate assessments, classification, and equalization; and

~~(4)~~ (3) Equalize between taxing districts and between classes of property. The board shall raise or lower, if necessary, each class of property on a percentage basis covering the class as a whole within the assessment district.

Appeals to the county board of equalization shall be heard de novo.

Section 20. That § 10-11-72 be AMENDED:

10-11-72. Consolidated board of equalization--Powers.

A consolidated board of equalization may:

- ~~(1) Make adjustments and corrections pursuant to § 10-11-61;~~
- ~~(2)~~ Correct clerical errors of the assessment roll;
- ~~(3)~~(2) Hear appeals from individuals regarding aggregate assessments, classification, and equalization; and
- ~~(4)~~(3) Equalize between taxing districts and between classes of property. The board shall raise or lower, if necessary, each class of property on a percentage basis covering the class as a whole within the assessment district.

Section 22. That § 10-39A-3 be AMENDED:

~~10-39A-3. Mineral severance tax--Collection and administration.~~

~~The tax provided for in this chapter shall be collected and administered as provided in chapter 10-39. However, §§ 10-39-24 to 10-39-26, inclusive, §§ 10-39-28 to 10-39-31, inclusive and § 10-39-35 do not apply to the tax imposed by this chapter.~~

Section 21. That § 10-39A-3 be REPEALED.

10-39A-3. Collection and administration according to mineral severance tax procedures.

Section 22. That § 10-39A-7 be AMENDED:

10-39A-7. Tax in lieu of other taxes.

This tax is in lieu of the tax provided in § 10-39-24 and in lieu of all other occupational, excise, income, privilege, franchise taxes, and any other mineral taxes levied by the State of South Dakota this state, but is not in lieu of sales, use, and property taxes.

Section 23. That § 10-45-61 be AMENDED:

10-45-61. Exemption certificate--Responsibilities of purchaser--Violation as misdemeanor--Retention of certificate--Rules and forms.

~~Notwithstanding § 10-54-1, a~~ A seller, who possesses an exemption certificate from a purchaser of tangible personal property, any product transferred electronically, or services which indicates the items or services being purchased are exempt, may rely on

the exemption certificate and not charge sales tax to the provider of the exemption certificate until the provider of the exemption certificate gives notice that the items or services being purchased are no longer exempt by filing a new exemption certificate with the seller.

The exemption certificate shall be signed by the purchaser. The exemption certificate shall provide the purchaser's name, address, and valid state tax license number, if applicable. However, any person filing an electronic exemption certificate is not required to sign the exemption certificate.

The purchaser claiming the protection of an exemption certificate is responsible for assuring that the goods and services delivered thereafter are of a type covered by the exemption certificate. A seller of property, any product transferred electronically, or services which are generally described under the exemption certificate is not responsible for the collection of the tax unless otherwise directed by the purchaser.

If the purchaser later determines there is any tax due and owing, the purchaser shall remit the tax owed by the purchaser to the state. If the purchaser makes an exempt purchase and later determines that the goods or services purchased are not exempt, the purchaser shall report the transaction and pay the use tax on the next filing of the purchaser's return.

Any purchaser who knowingly files an exemption certificate with a retailer in order to purchase tangible personal property, any product transferred electronically, or services with the intent to evade payment of the tax, and fails to timely report the same with the department is guilty of a Class 1 misdemeanor. The secretary of revenue may assess a penalty of up to fifty percent of the tax owed, in addition to the tax owed. No interest may be charged on the penalty.

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

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

Section 24. That § 10-52-3 be AMENDED:

10-52-3. Referendum procedure--Certain municipalities to review tax ordinances.

Any tax imposed by the governing board of any municipality pursuant to the provisions of this chapter, may be referred to a vote of the people for its approval or

disapproval in the same manner as provided in §§ 9-20-7, 9-20-8, and 9-20-10. A tax imposed by municipal ordinance which was in effect on December 31, 2003, is continued under the provisions of this chapter if:

- (1) The governing board of the municipality has reviewed the existing tax ordinance to determine compliance with the provisions of this chapter; and
- (2) The governing board of the municipality documents the review, any amendment, and the intent to continue the tax in the official minutes of the governing board.

Any amendment made by the municipality to comply with the provisions of chapter 10-45C, §§ 10-1-44.3, 10-45-1 to 10-45-1.4, inclusive, 10-45-2.3, 10-45-3.4, 10-45-5, 10-45-5.3, 10-45-8, 10-45-24, 10-45-30, 10-45-61, 10-45-108 and 10-45-109, 10-46-1, 10-46-17.6, 10-52-2, 10-52-2.10, 10-52-3, 10-52-9, 10-52-13 to ~~10-52-16, inclusive~~ through 10-52-15, and 10-59-27 or the determination to continue the tax under the provisions of this chapter is deemed to be an administrative decision pursuant to § 9-20-19 and is not subject to referendum.

Section 25. That § 11-3-1.1 be AMENDED:

11-3-1.1. Definitions.

Terms used in this chapter mean:

- (1) "Governing body," the board of county commissioners, the city council, city commission, or town board;
- (2) "Improvement district," an improvement district constituted under authority of chapter 7-25A;
- (3) "Municipality," an incorporated city or town;
- (4) "Planning commission," a planning commission constituted under authority of chapters 11-2, 11-4, and 11-6;
- (5) "Plat," a map, or representation on paper, of a piece of land subdivided into lots, parcels, tracts, or blocks, including streets, commons, and public grounds, if any, all drawn to scale;
- (6) "Registered land surveyor," a registered land surveyor, registered in good standing and legally authorized to practice land surveying ~~under the provisions of § 36-18-6;~~
- (7) "Streets," streets, avenues, boulevards, roads, lanes, alleys, or other ways.

Section 26. That § 11-11-179 be AMENDED:

11-11-179. Retirement and redemption of investments in sponsor of multifamily units and day-care facilities.

The authority shall have the power, in the supervision of housing sponsors of multifamily residential housing units and day-care facilities and their real and personal property, to regulate the retirement of any capital investment or the redemption of stock where any such retirement or redemption when added to any dividend or other distribution shall exceed in any one fiscal year such percentage as may be determined by rules ~~and regulations~~ of the authority ~~or as may be specified in the agreement required by § 11-11-156 of the original face amount of any investment or equity in any housing sponsor.~~ Projects whose rents or income limits applicable to project residents are established, subsidized or regulated by federal law, or whose loans are insured or guaranteed by the federal government shall be subject to an agreement between the authority and the housing sponsor which will subject said sponsor and its principals or stockholders, if any, to those limitations established by federal law, or such lower limitation as shall be prescribed by the authority, in regulating the retirement of any capital investment or the redemption of stock of the original face amount of any investment or equity in any housing sponsor.

Section 27. That § 12-6-6 be AMENDED:

12-6-6. Joint petitions for delegate and legislative candidates--Individual petitions.

Two or more candidates for delegates to the state convention of the party, and except as to candidates in joint legislative districts, candidates for two or more legislative offices may be included in one nominating petition. Except as provided ~~herein and in § 12-5-3 under this section,~~ individual nominating petitions shall be filed.

Section 28. That § 12-20-48.1 be AMENDED:

12-20-48.1. Certification to state party chairman of votes for national convention slates.

Upon the completion of the state canvass of the results of the primary election for delegates and alternates to the national convention, the State Canvassing Board shall certify to the state chairman of each political party the slates (groups of delegates and alternates) entered in the primary for each political party and the number of votes in the primary for each slate ~~pursuant to § 12-5-3.10.~~

1 **Section 29.** That § 12-27-43 be AMENDED:

2 **12-27-43. Action for civil penalty--Limitation.**

3 The attorney general may bring an action for a civil penalty against any person,
4 political committee, political party, or organization that violates § 12-27-16 ~~or 12-27-17~~,
5 in addition to any other penalties provided by law. The civil penalty may not exceed two
6 thousand dollars for each violation.

7 **Section 30.** That § 13-6-13.1 be AMENDED:

8 **13-6-13.1. Former school district representation areas for consolidated**
9 **districts--Establishment--Election of board members.**

10 When the reorganization plan is submitted, the school board or the electors of the
11 district may establish school board representation areas to represent each former school
12 district which consolidated to form the reorganized school district. Each former school
13 district representation area shall be formed by adhering to standards of population
14 deviance as established by judicial precedence. The former school district representation
15 areas shall be established after an election is called and held pursuant to §§ 13-8-3 to 13-
16 8-5, inclusive, by a majority vote of the electors voting at the election. The former school
17 district representation areas, if established, shall become effective January first of the
18 following year. ~~If so established, the representation areas supersede the provisions of~~
19 ~~§ 13-8-7 regarding representation from incorporated and nonincorporated areas. If former~~
20 ~~board member representation areas are established, the school board member candidate~~
21 ~~shall be a resident voter and reside within the representation area to qualify. The~~
22 ~~reorganization plan shall state whether the school board member candidates shall be~~
23 ~~elected at large or elected by the voters who reside within the representation area.~~

24 Any current board members shall serve the balance of their term. At the time of an
25 election or vacancy, board members shall be elected or appointed in order that each
26 representation area shall have a resident board member.

27 **Section 31.** That § 13-13-10.1 be AMENDED:

28 **13-13-10.1. Definitions.**

29 The education funding terms and procedures referenced in this chapter are defined
30 as follows:

31 (1) Repealed by SL 2016, ch 83, § 4;

(1A) Nonresident students who are in the care and custody of the Department of Social Services, the Unified Judicial System, the Department of Corrections, or other state agencies and are attending a public school may be included in the fall enrollment of the receiving district when enrolled in the receiving district;

(2) Repealed by SL 2016, ch 83, § 4;

(2A) "Fall enrollment," is calculated as follows:

(a) Determine the number of kindergarten through twelfth grade students enrolled in all schools operated by the school district on the last Friday of September of the current school year;

(b) Subtract the number of students for whom the district receives tuition except for:

(i) Nonresident students who are in the care and custody of a state agency and are attending a public school district; and

(ii) Students who are being provided an education pursuant to § 13-28-11;

(c) Add the number of students for whom the district pays tuition.

When computing state aid to education for a school district pursuant to § 13-13-73, the secretary of the Department of Education shall use the school district's fall enrollment;

(2B) Repealed by SL 2010, ch 84, § 1;

(2C) "Target teacher ratio factor," is:

(a) For school districts with a fall enrollment of two hundred or less, the target teacher ratio factor is 12;

(b) For districts with a fall enrollment of greater than two hundred, but less than six hundred, the target teacher ratio factor is calculated as follows:

(1) Multiplying the fall enrollment by .00750;

(2) Adding 10.50 to the product of subsection (b)(1);

(c) For districts with a fall enrollment of six hundred or greater, the target teacher ratio factor is 15.

The fall enrollment used for the determination of the target teacher ratio for a school district may not include any students residing in a residential treatment facility when the education program is operated by the school district;

(2D) "Limited English proficiency (LEP) adjustment," is calculated by multiplying 0.25 times the number of kindergarten through twelfth grade students who, in the prior school year, scored below level four on the state-administered language proficiency

- 1 assessment as required in the state's consolidated state application pursuant to 20
2 USC § 6311(b)(7) as of January 1, 2013;
- 3 (3) "Index factor," is the annual percentage change in the consumer price index for
4 urban wage earners and clerical workers as computed by the Bureau of Labor
5 Statistics of the United States Department of Labor for the year before the year
6 immediately preceding the year of adjustment or three percent, whichever is less;
- 7 (4) "Target teacher salary," for the school fiscal year beginning July 1, 2019 is
8 \$50,360.26. Each school fiscal year thereafter, the target teacher salary is the
9 previous fiscal year's target teacher salary increased by the index factor;
- 10 (4A) "Target teacher benefits," is the target teacher salary multiplied by twenty-nine
11 percent;
- 12 (4B) "Target teacher compensation," is the sum of the target teacher salary and the
13 target teacher benefits;
- 14 (4C) "Overhead rate," is thirty-three and six hundredths percent.
- 15 Beginning in school fiscal year 2018, the overhead rate shall be adjusted to take into
16 account the sum of the amounts that districts exceed the other revenue base
17 amount;
- 18 (5) "Local need," is calculated as follows:
- 19 (a) Divide the fall enrollment by the target teacher ratio factor;
- 20 (b) If applicable, divide Limited English proficiency (LEP) adjustment pursuant to
21 subdivision (2D) by the target teacher ratio factor;
- 22 (c) Add the results of subsections (a) and (b);
- 23 (d) Multiply the result of subsection (c) by the target teacher compensation;
- 24 (e) Multiply the product of subsection (d) by the overhead rate;
- 25 (f) Add the products of subsections (d) and (e);
- 26 (g) When calculating local need at the statewide level, include the amounts set
27 aside for costs related to technology in schools and statewide student
28 assessments; and
- 29 (h) When calculating local need at the statewide level, include the amounts set
30 aside for sparse school district benefits, calculated pursuant to §§ 13-13-78
31 and 13-13-79;
- 32 (5A) "Alternative per student need," is calculated as follows:
- 33 (a) Add the total need for each school district for school fiscal year 2016,
34 including the small school adjustment and the limited English proficiency
35 adjustment, to the lesser of the amount of funds apportioned to each school

district in the year preceding the most recently completed school fiscal year or school fiscal year 2015 pursuant to §§ 13-13-4, 23A-27-25, 10-33-24, 10-36-10, 11-7-73, 10-35-21, and 10-43-77;

(b) Divide the result of (a) by the September 2015 fall enrollment, excluding any adjustments based on prior year student counts;

(5B) "Alternative local need," is the alternative per student need multiplied by the fall enrollment, excluding any adjustments based on prior year student counts;

(6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by applying the levies established pursuant to § 10-12-42. Beginning on July 1, 2017, local effort will include the amount of funds apportioned to each school district in the year preceding the most recently completed school fiscal year pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 and that exceeds the other revenue base amount. ~~For the period July 1, 2016, through December 31, 2016, inclusive, local effort includes the amount of ad valorem taxes generated by applying the levies established pursuant to § 13-10-6 during this period;~~

(6A) "Other revenue base amount," for school districts not utilizing the alternative local need calculation is the amount of funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 calculated as follows:

(a) Beginning on July 1, 2017, equals the greatest of the amounts of the funds apportioned to each school district pursuant to §§ 10-33-24, 10-35-21 as provided by subdivision (6B), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and 23A-27-25 for school fiscal years 2013, 2014, and 2015;

(b) Beginning on July 1, 2018, multiply eighty percent times subsection (a);

(c) Beginning on July 1, 2019, multiply sixty percent times subsection (a);

(d) Beginning on July 1, 2020, multiply forty percent times subsection (a);

(e) Beginning on July 1, 2021, multiply twenty percent times subsection (a);

(f) Beginning on July 1, 2022, is zero.

For school districts utilizing the alternative local need calculation, the other revenue base amount is zero until such time the school district chooses to no longer utilize the alternative local need calculation. At that time, the other revenue base amount is calculated as defined above.

For a school district created or reorganized after July 1, 2016, the other revenue base amount is the sum of the other revenue base amount for each district before

1 reorganization, and the new school district may not utilize the alternative local need
2 calculation.

3 In the case of the dissolution and annexation of a district, the other revenue base
4 amount of the dissolved school district will be prorated based on the total number
5 of students in the fall enrollment as defined in subdivision (2A) who attend each
6 district to which area of the dissolved district were annexed to in the first year of
7 reorganization. The amount apportioned for each district will be added to the
8 annexed districts' other revenue base;

9 (6B) "Wind energy tax revenue," any wind energy tax revenue apportioned to school
10 districts pursuant to § 10-35-21 from a wind farm producing power for the first time
11 before July 1, 2016, shall be considered local effort pursuant to subdivision (6) and
12 other revenue base amount pursuant to subdivision (6A). However, any wind
13 energy tax revenue apportioned to a school district from a wind farm producing
14 power for the first time after June 30, 2016, one hundred percent shall be retained
15 by the school district to which the tax revenue is apportioned for the first five years
16 of producing power, eighty percent for the sixth year, sixty percent for the seventh
17 year, forty percent for the eighth year, twenty percent for the ninth year, and zero
18 percent thereafter;

19 (7) "Per student equivalent," for funding calculations that are determined on a per
20 student basis, the per student equivalent is calculated as follows:

21 (a) Multiply the target teacher compensation times the sum of one plus the
22 overhead rate;

23 (b) Divide subsection (a) by 15;

24 (8) "Monthly cash balance," the total amount of money for each month in the school
25 district's general fund, calculated by adding all deposits made during the month to
26 the beginning cash balance and deducting all disbursements or payments made
27 during the month;

28 (9) "General fund base percentage," is determined as follows:

29 (a) Forty percent for a school district with a fall enrollment as defined in
30 subdivision (2A) of two hundred or less;

31 (b) Thirty percent for a school district with fall enrollment as defined in
32 subdivision (2A) of more than two hundred but less than six hundred; and

33 (c) Twenty-five percent for a school district with fall enrollment as defined in
34 subdivision (2A) greater than or equal to six hundred.

- 1 When determining the general fund base percentage, the secretary of the
2 Department of Education shall use the lesser of the school district's fall enrollment
3 as defined in subdivision (2A) for the current school year or the school district's fall
4 enrollment from the previous two years;
- 5 (10) "Allowable general fund cash balance," the general fund base percentage multiplied
6 by the district's general fund expenditures in the previous school year.

7 **Section 32.** That § 13-13-11 be AMENDED:

8 **13-13-11. General school aid--Purpose.**

- 9 It is the purpose of §§ 13-13-10.1 ~~to through 13-13-41, inclusive,~~ to establish a
10 procedure for the distribution of state funds to local school districts. The following
11 subdivisions are hereby declared to be the policy of this state:
- 12 (1) Education is a state and local function.
- 13 (2) No one source of taxation should bear an excessive burden of the costs of education.
- 14 (3) In order to provide reasonable equality in school tax rates among the various school
15 districts in the state and to provide reasonable equality of educational opportunity
16 for all the children in the state, the state shall assist in giving a basic educational
17 opportunity to each student by contributing state aid to education funds toward the
18 support of his educational program.
- 19 (4) State aid to education funds should be distributed to school districts in accordance
20 with the formula as provided in §§ 13-13-10.1 ~~to 13-13-46, inclusive~~ through 13-
21 13-41.
- 22 (5) A minimum of twenty-five percent of the total general fund expenditures of the
23 school districts of the state for the preceding school fiscal year should be distributed
24 annually to school districts as state aid to education funding.
- 25 (6) No school district should be eligible to receive state aid which does not provide an
26 educational program which meets the requirements and standards as provided in
27 §§ 13-13-10.1 to 13-13-41, inclusive.

28 **Section 33.** That § 13-25-9 be AMENDED:

29 **13-25-9. Authority to close school or vacate building if hazards not**
30 **eliminated.**

- 31 If any school governing body, or other agency operating a school, fails to comply
32 with the order provided by § 13-25-7, and fails to appeal from the order, ~~as is provided~~
33 ~~in § 13-25-8,~~ after the time for appeal has expired, or the time to comply with the order

has passed, whichever is later, the State Fire Marshal may immediately close the school or school facility to further use or occupancy, and may vacate and place out of service said school or school building, or facility until such time as its requirements are fulfilled.

Section 34. That § 13-25-12 be AMENDED:

13-25-12. Public school attendance centers--Response time--Exemption.

If the state fire marshal finds that due to the remote location of the public school attendance center the response time of the local fire department makes saving the attendance center from extensive fire damage unlikely, he may exempt certain remote small public school attendance centers from the provisions of ~~§§ 13-25-11 and 13-25-8~~ § 13-25-11.

Section 35. That § 13-33A-8 be AMENDED:

13-33A-8. Epinephrine auto-injector administration--Immunity.

No school district, administrator, school board, school nurse, or designated school personnel that possess or make available epinephrine auto-injectors pursuant to §§ 13-33A-4 ~~to 13-33-8, inclusive~~ through 13-33A-8; authorized health care provider that prescribes epinephrine auto-injectors to a school; or a health care professional that provides training pursuant to § 13-33A-7 may be held liable for any injury or related damage that results from the administration of, self-administration of, or failure to administer an epinephrine auto-injector that may constitute ordinary negligence. This immunity does not apply to an act or omission constituting gross, willful, or wanton negligence. The administration of an epinephrine auto-injector in accordance with the provisions of §§ 13-33A-4 ~~to 13-33-8, inclusive,~~ through 13-33A-8 does not constitute the practice of medicine. The immunity from liability provided under this section is in addition to, not in lieu of, that provided in any other law.

Section 36. That § 13-36-4 be AMENDED:

13-36-4. Delegation of control, supervision, and regulation of high school interscholastic activities to association.

The school board of a public school, approved and accredited by the secretary of the Department of Education, may delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if:

- (1) Membership in the association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title;
- (2) The constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board;
- (3) The report of any audit required by ~~§ 13-26-5~~ § 13-36-5 is made public on the association's website as well as the Department of Legislative Audit's website;
- (4) The association complies with the provisions of chapter 1-25 and chapter 1-27. However, the association, and its employees, meetings, and records, are afforded the same exemptions and protections as a political subdivision or public body is provided under chapter 1-25 and chapter 1-27; and
- (5) The association shall report to the Government Operations and Audit Committee annually, or at the call of the chair.

The governing body of a nonpublic school, approved and accredited by the secretary of the Department of Education, or AdvancED, or the Association of Christian Schools International (ACSI), or the Association of Classical and Christian Schools (ACCS), or Christian Schools International (CSI), or National Lutheran School Accreditation (NLSA), or Commission for Oceti Sakowin Accreditation (COSA), or Wisconsin Evangelical Lutheran Synod School Accreditation, may also delegate, on a year to year basis, the control, supervision, and regulation of any high school interscholastic activities to any association which is voluntary and nonprofit if membership in such association is open to all high schools approved and accredited pursuant to this section, including any school that allows participation by students receiving alternative instruction as set forth in § 13-27-3, pursuant to the provisions of this title, and if the constitution, bylaws, and rules of the association are subject to ratification by the school boards of the member public school districts and the governing boards of the member nonpublic schools and include a provision for a proper review procedure and review board.

Any association which complies with this section may exercise the control, supervision, and regulation of interscholastic activities, including interscholastic athletic events of member schools. The association may promulgate reasonable uniform rules, to make decisions and to provide and enforce reasonable penalties for the violation of the rules.

Section 37. That § 13-36-14 be AMENDED:

1 **13-36-14. Cause of action not created.**

2 Sections ~~to §§ 13-36-9 to 13-35-13, inclusive, through 13-36-13~~ do not create any
3 liability for, or create any cause of legal action against, a school, a school district, or any
4 officer or employee of a school or school district.

5 **Section 38.** That § 13-37-16 be AMENDED:

6 **13-37-16. District tax levy for special education--School district special**
7 **education fund.**

8 For taxes payable in 2020, and each year thereafter, the school board shall levy
9 no more than one dollar and sixty-one and six tenths cents per thousand dollars of taxable
10 valuation, as a special levy in addition to all other levies authorized by law for the amount
11 so determined to be necessary, and the levy shall be spread against all of the taxable
12 property of the district. The proceeds derived from the levy shall constitute a school district
13 special education fund of the district for the payment of costs for the special education of
14 all children in need of special education or special education and related services who
15 reside within the district pursuant to the provisions of ~~§§ 13-37-8.2 to 13-37-8.10,~~
16 ~~inclusive §§ 13-37-8.4 through 13-37-8.10.~~ The levy in this section shall be based on
17 valuations such that the median level of assessment represents eighty-five percent of
18 market value as determined by the Department of Revenue. The total amount of taxes
19 that would be generated at the levy pursuant to this section shall be considered local
20 effort. Money in the special education fund may be expended for the purchase or lease of
21 any assistive technology that is directly related to special education and specified in a
22 student's individualized education plan. This section does not apply to real property
23 improvements.

24 **Section 39.** That § 13-37-40.1 be AMENDED:

25 **13-37-40.1. Certification required for funding.**

26 A school district is not eligible for funding from the money set aside in ~~§§ 13-37-~~
27 ~~38 to 13-37-40, inclusive, § 13-37-40~~ unless the school district certifies to the secretary
28 of education that its ending special education fund balance will not exceed ten percent of
29 its special education expenditures for the current fiscal year.

30 **Section 40.** That § 13-37-44 be AMENDED:

13-37-44. Reduction of district's aid for special education for excess balance in fund.

A school district's state aid for special education as calculated pursuant to § 13-37-36.1 shall be reduced by the amount which its ending special education fund balance exceeds twenty-five percent of its special education expenditures for the prior fiscal year or one hundred thousand dollars, whichever is greater, if the school district did not receive money set aside in § 13-37-40 during the prior fiscal year; or the amount which its ending special education fund balance exceeds ten percent of its special education expenditures for the prior fiscal year if the school district received money set aside in ~~§§ 13-37-38 to 13-37-40, inclusive,~~ § 13-37-40 during the prior fiscal year.

Section 41. That § 13-37-45 be AMENDED:

13-37-45. Allocation of undistributed appropriations.

Any funds appropriated as state aid for special education which are not distributed according to § 13-37-36.3 ~~or 13-37-43~~ shall be used to fund any shortfall of the appropriation provided for in § 13-13-73. The remaining funds shall be allocated by the secretary of the Department of Education for the purposes specified in ~~§ 13-37-38, 13-37-39, or § 13-37-40.~~ The secretary shall report to the Governor by January seventh of each year, the amount of state aid necessary to fully fund the special education formula in the current year. If a shortfall in the state aid appropriation for special education exists that cannot be covered by § 13-13-73, the Governor shall inform the Legislature and provide a proposal to eliminate the shortfall.

Section 42. That § 13-42-5.1 be AMENDED:

13-42-5.1. Use of institute funds--Vouchers and warrants.

The state institute fund, ~~formerly provided for by § 13-42-5,~~ shall be used for the purpose of writing and publishing bulletins, accreditation rules, and materials essential to the school systems of this state, and to support activities related to school accreditation and teacher training and retention, and as otherwise may be provided by law; and the state institute fund is hereby appropriated for such purposes and shall be paid out upon warrants drawn by the state auditor on duly itemized vouchers approved by the secretary of the Department of Education.

Section 43. That § 13-49-14.3 be AMENDED:

1 **13-49-14.3. Employee insurance benefits through self-insured plan--Joining**
2 **state plan.**

3 The Board of Regents, at its discretion, may elect to provide all, or any part of, the
4 insurance benefits for its employees by means of a plan which is self-insured in whole or
5 in part. The board may execute a contract or contracts with such claims administrators as
6 the board may select. In making such selection, the board shall consider, among other
7 things, financial stability, experience, and claims facilities. In evaluating these factors, the
8 board may employ the services of impartial, professional analysts or actuaries, or both.
9 ~~Notwithstanding the provisions of § 3-12A-10, the board may provide insurance coverage~~
10 ~~by electing to join the plan provided by § 3-12A-5.1.~~

11 **Section 44.** That § 15-12-20 be AMENDED:

12 **15-12-20. Definitions.**

13 Terms, as used in §§ 15-12-20 to 15-12-37, inclusive, unless the context otherwise
14 requires, mean:

- 15 (1) "Action," any action or special proceeding in the trial court, whether civil or criminal
16 or quasi-criminal;
17 (2) "Canon" or "Canons," the canons set forth in the South Dakota Code of Judicial
18 Conduct appearing as an appendix to chapter 16-2;
19 (3) "Judge," a judge of the circuit court or a retired justice or judge acting pursuant to
20 appointment by the Chief Justice;
21 (4) "Magistrate," ~~both magistrate judges and nonlaw-trained magistrates as defined by~~
22 ~~§ 16-12A-1~~ a magistrate judge as defined by 16-12A-1.1; and
23 (5) "Party," any party within the meaning of the rules of civil or criminal procedure and
24 the statutes of this state.

25 **Section 45.** That § 15-39-69 be AMENDED:

26 **15-39-69. Venue.**

27 The venue is limited to the county of the residence of the defendant, if the
28 defendant is a natural person, or the county in which the cause of action arose. If the
29 defendant is a corporation, limited liability company, or a partnership, the proceedings
30 shall be commenced in any county in which the defendant has its place of business.
31 ~~However, if the plaintiff in an action brought by the Bureau of Administration pursuant to~~
32 ~~§ 1-14-14.3 is the State of South Dakota, an agency, as defined in subdivision 1-26-1(1),~~
33 ~~or employee of the state or any agency acting within the scope of the employee's~~

1 ~~employment, the proceedings may only be commenced in Hughes County.~~ No change of
2 venue may be recognized except by stipulations of the parties, or by order of the court on
3 a showing of good cause by the defendant. Nothing in this section waives the common
4 law doctrine of sovereign immunity or acts as a consent to suit by the State of South
5 Dakota, its agencies, or its employees acting within the scope of their employment.

6 **Section 46.** That § 16-2-21 be AMENDED:

7 **16-2-21. Presiding judges for circuits--Appointment--Administrative powers**
8 **and duties--Court held in each county.**

9 The presiding judge in each judicial circuit, to be appointed by the Chief Justice,
10 subject to the rules of the Supreme Court, has administrative supervision and authority
11 over the operation of the circuit courts, the courts of limited jurisdiction, and clerks and
12 other court personnel in the circuit. These powers and duties include, but are not limited
13 to, the following:

- 14 (1) Arranging schedules and assigning circuit judges for sessions of circuit courts;
- 15 (2) Arranging or supervising the calendaring of matters for trial or hearing;
- 16 (3) Appointing clerks, deputies and other personnel within the circuit to make available
17 their services in every county in the circuit and, subject to standards established by
18 the Supreme Court, fixing their compensation ~~within the limits set by § 16-2-23~~
19 with approval of the Chief Justice, and supervising the personnel in the discharge
20 of their functions;
- 21 (4) Assigning matters and duties to clerks, and prescribing times and places at which
22 clerks shall be available for the performance of their duties;
- 23 (5) Making arrangements with proper authorities for the drawing of jury panels and
24 determining which sessions shall be jury sessions;
- 25 (6) Arranging for the reporting of cases by court reporters or other authorized means;
- 26 (7) Arranging for the orderly disposition of specialized matters, including, but not
27 limited to traffic, domestic relations, and proceedings under chapters 26-7A, 26-
28 8A, 26-8B, and 26-8C;
- 29 (8) Promulgating a schedule of offenses for which magistrates or other designated
30 persons may accept written appearances, waivers of trial, and pleas of guilty, and
31 establishing a schedule of fines and bails therefor;
- 32 (9) Assigning to other circuit judges in the circuit various powers and duties in this
33 chapter provided;
- 34 (10) Periodically reviewing the performance and application by magistrates, clerks and

1 deputy clerks of schedules they are to follow, and correcting, with or without the
2 request of the person affected, erroneous application thereof.

3 The presiding judge shall arrange that a circuit judge is available to hold court in the
4 county seat of each county in the circuit as necessary to distribute the work of the courts,
5 alleviate congestion, and secure the prompt disposition of cases for each county.

6 **Section 47.** That § 16-18-34.7 be AMENDED:

7 **16-18-34.7. Recommendations in attorney disciplinary proceedings.**

8 Any recommendation for disbarment or suspension made by the Disciplinary Board
9 ~~under § 16-19-67~~ or the referee under ~~§ 16-19-68~~ § 16-19-67 shall contain a
10 recommendation as to the restrictions or conditions of employment and supervision of the
11 accused attorney as a legal assistant.

12 **Section 48.** That § 21-1-13.2 be AMENDED:

13 **21-1-13.2. Application of interest statutes.**

14 The provisions of § 21-1-13.1 apply to any suit commenced on or after July 1,
15 1990. ~~The provisions of §§ 21-1-11 and 21-1-13 apply to any suit commenced before July~~
16 ~~1, 1990.~~

17 **Section 49.** That § 21-44-27 be AMENDED:

18 **21-44-27. Termination of spousal joint tenancy by any interested person.**

19 If the spouse of a decedent is the sole surviving joint tenant in real property, any
20 interested person may terminate the joint tenancy by furnishing the register of deeds of
21 the county where the property is located with an affidavit setting forth the following:

- 22 (1) The name and date of death of the deceased joint tenant;
23 (2) The legal description of the real property held in joint tenancy;
24 (3) The name of the surviving spouse of the deceased joint tenant;
25 (4) That the surviving spouse of the deceased joint tenant is the sole surviving joint
26 tenant in the real property.

27 The affidavit shall be accompanied by a certified copy of the death certificate of the
28 deceased joint tenant. ~~The affidavit may be filed in lieu of the report required by § 10-41-~~
29 ~~17.~~

30 **Section 50.** That § 21-49-11 be AMENDED:

21-49-11. Foreclosure alternatives available on small tracts subject to chapter--Mortgages under earlier law.

Any mortgage made pursuant to this chapter on real property of an area of not more than forty acres containing therein a power of sale, upon default being made in the conditions of the mortgage, may be foreclosed as provided in chapter 21-47 or 21-48 or as provided in this chapter. Any mortgage made pursuant to ~~§§ 21-49-1 to 21-49-10~~ prior to July 1, 1977 may be foreclosed ~~as provided therein or~~ as provided in this section.

Section 51. That § 22-24B-1 be AMENDED:

22-24B-1. Sex crimes defined.

For the purposes of §§ 22-24B-2 to 22-24B-14, inclusive, a sex crime is any of the following crimes regardless of the date of the commission of the offense or the date of conviction:

- (1) Rape as set forth in § 22-22-1;
- (2) Felony sexual contact with a minor under sixteen as set forth in § 22-22-7 if committed by an adult;
- (3) Sexual contact with a person incapable of consenting as set forth in § 22-22-7.2;
- (4) Incest if committed by an adult;
- (5) Possessing, manufacturing, or distributing child pornography as set forth in § 22-24A-3;
- (6) Sale of child pornography as set forth in § 22-24A-1;
- (7) Sexual exploitation of a minor as set forth in § 22-22-24.3;
- (8) Kidnapping, as set forth in § 22-19-1, if the victim of the criminal act is a minor;
- (9) Promotion of prostitution of a minor as set forth in subdivision 22-23-2(2);
- (10) Criminal pedophilia ~~as previously set forth in § 22-22-30.1 prior to July 1, 2006;~~
- (11) Felony indecent exposure ~~as previously set forth in former § 22-24-1 prior to July 1, 1998~~ or felony indecent exposure as set forth in § 22-24-1.2;
- (12) Solicitation of a minor as set forth in § 22-24A-5;
- (13) Felony indecent exposure as set forth in § 22-24-1.3;
- (14) Bestiality as set forth in § 22-22-42;
- (15) An attempt, conspiracy, or solicitation to commit any of the crimes listed in this section;
- (16) Any crime, court martial offense, or tribal offense committed in a place other than this state that constitutes a sex crime under this section if committed in this state;
- (17) Any federal crime, court martial offense, or tribal offense that constitutes a sex

- 1 crime under federal law;
- 2 (18) Any crime committed in another state if that state also requires anyone convicted
- 3 of that crime register as a sex offender in that state;
- 4 (19) If the victim is a minor:
- 5 (a) Any sexual acts between a jail employee and a detainee as set forth in § 22-
- 6 22-7.6;
- 7 (b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or
- 8 (c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;
- 9 (20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;
- 10 (21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor; or
- 11 (22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution
- 12 of a minor.

13 **Section 52.** That § 24-15-30 be AMENDED:

14 **24-15-30. Written waiver of right to hearing or appearance.**

15 A request for waiver of a right to a parole hearing or an appearance at a parole

16 hearing pursuant to § 24-15-8, ~~25-15-23~~ 24-15-23, 24-15A-39, or 24-15A-41 shall be

17 submitted in writing to the Board of Pardons and Paroles by the inmate or parolee.

18 **Section 53.** That § 26-9-3 be AMENDED:

19 **26-9-3. Original jurisdiction of prosecutions.**

20 Subject to ~~§ 16-12A-22~~, ~~the~~ The circuit court in all counties shall have original

21 jurisdiction of all prosecutions under this chapter.

22 **Section 54.** That § 28-13-32.11 be AMENDED:

23 **28-13-32.11. Determination of household's ability to purchase health**

24 **insurance.**

25 For purposes of subsections 28-13-27(6)(c) and (d), when determining whether

26 the household was financially able to purchase health insurance which would have covered

27 the medical costs the county is being requested to pay, the county shall use the following

28 methodology:

- 29 (1) Determine the household's income and resources according to §§ 28-13-32.7 and
- 30 28-13-32.8;
- 31 (2) Determine the household's contributions for taxes, social security, medicare, and

- 1 payments to other standard retirement programs according to subdivision 28-13-
2 32.9(1);
- 3 (3) Except for the medical expenses for which the household is requesting assistance,
4 determine the household's expenses according to subdivision 28-13-32.9(2);
- 5 (4) Determine the amount of the household's discretionary income by subtracting the
6 sum of the household's contributions and expenses from the household's income.
7 Divide the amount of the household's discretionary income in half. The result added
8 to the household's adjusted resources determined according to § 28-13-32.8 equals
9 the household's discretionary income that was available to purchase health
10 insurance;
- 11 (5) Subtract the amount of the monthly health insurance premium that was available
12 to the household if known or, if unknown, an estimate of the premium the household
13 could be expected to incur. For purposes of this subdivision, the county shall
14 establish such estimate either by obtaining premium estimates from two major
15 medical insurance carriers doing business in the state or by using an estimate based
16 on the rate data provided to the county by the Division of Insurance of the
17 Department of Labor and Regulation. ~~The policy used shall have a benefit design~~
18 ~~that equals or exceeds the benefit design of the basic benefit plan as developed by~~
19 ~~the Health Benefit Plan Committee pursuant to § 58-18B-32.~~ If the result is a
20 negative number, the health insurance was not affordable. If the result is a positive
21 number, health insurance was affordable and the individual is considered to be
22 indigent by design.

23 **Section 55.** That § 31-2-14.3 be AMENDED:

24 **31-2-14.3. Annual appropriation to Department of Revenue--Distribution.**

25 There is hereby appropriated each fiscal year from the state highway fund the sum
26 of one million thirty-three thousand two hundred sixty-nine dollars and ten cents to the
27 Department of Revenue for distribution to the counties. The moneys shall be distributed
28 to the counties in the same amounts as funds were distributed to the counties by the
29 Department of Game, Fish and Parks for license fees in calendar year 1997, ~~pursuant to~~
30 ~~§ 41-6-70.~~ The moneys shall be deposited in the special highway fund of each county. The
31 secretary of revenue shall distribute the money prior to December thirty-first of each year.

32 **Section 56.** That § 31-3-19 be AMENDED:

31-3-19. County location proceedings--Highways to which applicable.

The provisions of ~~§§ 31-3-22 to 31-3-37, inclusive,~~ shall ~~§§ 31-3-23 through 31-3-37~~ apply to all public highways by whatever authority located within any organized county which are not within the limits of any municipality, except that no portion of the state trunk highway system or county highway systems shall be vacated, changed, or located except with the approval of and in accordance with the order of the Department of Transportation to be first made.

Section 57. That § 31-3-23 be AMENDED:

31-3-23. Proceedings on short highway without usual number of petitioners--Payment of damages.

Where such public highway proposed to be located is not more than one mile in length, the board of county commissioners shall in all things proceed as provided in ~~§§ 31-3-22 to 31-3-37, inclusive,~~ §§ 31-3-23 through 31-3-37 although the petition for such highway may be by but one or more petitioners and the board of county commissioners shall require the petitioner or petitioners for such highway to pay the damages assessed for the location thereof.

Section 58. That § 31-12-42 be AMENDED:

31-12-42. Vehicle license collections to be used outside municipalities.

The portion of the county road and bridge fund derived from motor vehicle license collections ~~credited pursuant to § 32-11-1~~ § 32-11-4.1 shall be used by the board of county commissioners for constructing and maintaining county highways outside the limits of municipalities, and also for constructing and maintaining secondary roads.

Section 59. That § 31-12A-5.1 be AMENDED:

31-12A-5.1. Territory within or without subdivision jurisdiction of municipality--Requirement for approval of petition.

If any territory is within the subdivision jurisdiction of a municipality, the petition for the incorporation described in § 31-12A-3 shall first be submitted to the municipality's governing body for approval at its discretion, and upon approval shall be presented to the county board of commissioners. ~~If any territory is outside the subdivision jurisdiction of a municipality, but within the subdivision jurisdiction of the county, the board may, subject to its discretion, approve the petition pursuant to § 31-12A-5. However, if any territory is~~

1 ~~not within the subdivision jurisdiction of a municipality or the county then the county board~~
2 ~~shall approve the petition pursuant to § 31-12A-5.~~

3 **Section 60.** That § 31-12A-23 be AMENDED:

4 **31-12A-23. Certification to county auditor of delinquent charges for road**
5 **district services--Penalty and interest--Tax sale--Referendum on assessment or**
6 **bond issue.**

7 The board of trustees may cause the amount of any charges, and interest and
8 penalties on the charges, for road district service rendered or made available to any land
9 within and part of the district, which are due and unpaid on the first day of October in
10 each year to be certified by the clerk of the district to the county auditor in the manner
11 provided in § 10-12-7 together with any taxes levied by the district for corporate
12 purposes. All amounts so certified shall be inserted by the county auditor upon the tax list
13 of the current year and are payable and delinquent at the same time and shall incur
14 penalty and interest and shall be collected by the same procedure as real estate taxes on
15 the same property. ~~In the event of a tax sale or the issuance of a tax deed, the provisions~~
16 ~~of §§ 9-43-39 to 9-43-41, inclusive, §§ 9-43-112 and 9-43-113 apply to all amounts so~~
17 ~~certified and then delinquent, in the same manner as delinquent installments of special~~
18 ~~assessments.~~ Five percent of the eligible voters of the district may petition the board of
19 trustees for referendum of any special assessment or bond issue. A majority of the eligible
20 voters of the district who own the lots, tracts, or parcels of land subject to a special
21 assessment or bond issue by the road district is required for approval of the special
22 assessment or bond issue. For purposes of a referendum, if more than one person holds
23 an interest in a lot, tract, or parcel of land subject to a special assessment or bond issue,
24 the vote for the lot, tract, or parcel of land shall be exercised as the owners may among
25 themselves determine and in no event may more than one vote be cast with respect to
26 any one lot, tract, or parcel of land in any referendum. The referendum shall be governed,
27 to the extent applicable, by chapter 9-20. The referendum petition shall be filed with the
28 clerk of the district within twenty days after the notice of the levy of the special assessment
29 or bond issue has been given the landowner.

30 **Section 61.** That § 31-13-14 be AMENDED:

31-13-14. Township funds from motor vehicle license fees--Transfer to county.

Each organized township in the state has power to transfer upon resolution to the county in which it is situated for its highway purposes surplus funds acquired from the prorationing of the fees from the motor vehicle licenses as provided in ~~§§ 32-11-4 to 32-11-7, inclusive~~ §§ 32-11-4.1 through 32-11-7.

Section 62. That § 31-13-36 be AMENDED:

31-13-36. Assumption of portion of cost by township--Referendum.

If it is deemed expedient for the township to assume and pay any portion of the cost of the improvement, the resolution may so provide, or the portion to be assumed may be provided by a subsequent resolution, subject to the right of referendum on such resolution, pursuant to the procedure set forth in ~~§§ 31-3-14 to 31-3-16, inclusive~~ § 31-3-14.

Section 63. That § 31-13-41 be AMENDED:

31-13-41. Waiting period before actions on improvement--Ratification of prior actions.

After twenty days from the adoption and publication of the resolution referred to in § 31-13-40, unless the referendum be invoked, pursuant to ~~§§ 31-3-14 to 31-3-16, inclusive,~~ § 31-3-14 or unless a written protest shall have been filed with the township clerk and signed by the owners of more than fifty-five percent of the frontage of property liable to assessment, the board of supervisors may cause the improvement to be made, may contract therefor, and may levy and collect special assessments therefor as provided in this chapter. Any proceedings taken prior to the adoption of the resolution shall be deemed ratified.

Section 64. That § 31-19-46 be AMENDED:

31-19-46. Exchange of non-right-of-way property.

Notwithstanding ~~the provisions of §§ 31-2-27 to 31-2-31, inclusive~~ § 31-27-27, the Department of Transportation may exchange acquired lands with landowners from whom right-of-way or real property may be needed.

Section 65. That § 31-20-6 be AMENDED:

1 **31-20-6. Consideration for sale--Amount necessary for redemption--**
2 **Distribution of proceeds by county auditor--Distribution pro rata.**

3 In case the county sells right-of-way to the state pursuant to § 31-20-5 any
4 consideration received therefor shall be distributed as follows:

5 ~~The county auditor shall ascertain the amount that would have been required to~~
6 ~~redeem said parcel from the tax sale under §§ 10-24-9 to 10-24-15, inclusive, if said sale~~
7 ~~had been subject to partial redemption.~~

8 If the sale price received from said sale shall equal or exceed the amount required to
9 redeem said parcel from said sale the auditor shall pay to various taxing districts their
10 share of said money in no case exceeding the sum they would have received if same had
11 been redeemed and the balance of the consideration, if any, shall be paid into the county
12 general fund.

13 If the sale price received for said parcel shall be less than the amount required to
14 redeem the amount received shall be divided among the taxing districts pro rata as their
15 interests may appear.

16 **Section 66.** That § 31-26-7 be AMENDED:

17 **31-26-7. Telephone lines--Compliance with other statutes.**

18 Any person engaged in or about to engage in the furnishing of telephone service
19 must comply with the provisions of ~~§§ 49-31-20 to 49-31-24, inclusive~~ § 49-31-20, and
20 nothing in §§ 31-26-1 to 31-26-6, inclusive, shall be construed to limit the rights granted
21 by § 49-32-1 to telegraph and telephone companies.

22 **Section 67.** That § 31-28-25 be AMENDED:

23 **31-28-25. Traffic light control.**

24 Nothing in §§ 31-28-19 ~~to 31-28-24, inclusive, through 31-28-23.1~~ limits the
25 existing authority of South Dakota law enforcement officers in the performance of their
26 duties involving traffic light control.

27 **Section 68.** That § 31-29-60 be AMENDED:

28 **31-29-60. Compensation for removal of nonconforming signs--Federal**
29 **contributions.**

30 ~~Despite any provision in §§ 31-29-17 to 31-29-48, inclusive, to the contrary, no~~
31 No sign, display, or device may be required to be removed unless at the time of removal

1 there are sufficient funds appropriated and available to pay the affected parties ~~the just~~
2 compensation ~~required by §§ 31-29-50 to 31-29-56, inclusive,~~ after due allowance for any
3 contribution which may be available from the federal government, and if the latter
4 contribution is available for immediate payment.

5 **Section 69.** That § 31-29-62 be AMENDED:

6 **31-29-62. Definition of terms.**

7 Terms used in ~~§ 31-29-59 and §§ 31-29-61 to 31-29-87, inclusive,~~ this chapter
8 mean:

- 9 (1) "Abandoned sign," a sign or sign structure that is blank, obliterated or displays
10 obsolete advertising material for a period in excess of twelve continuous months;
11 (2) "Advertising area," the area of the sign face including border and trim, but not
12 supports or aprons;
13 (3) "Blank sign," a sign that is void of advertising material;
14 (4) "Department," the South Dakota State Department of Transportation;
15 (5) "Directional information," route markers, mileage markers, directions to on-site
16 location and information sufficient to guide a traveling motorist to a specific facility;
17 (6) "Directional sign," a sign designated, described and authorized by 23 U.S.C.
18 § 131(c)(1) and the rules and regulations promulgated thereunder as of July 1,
19 1979;
20 (7) "Information center," an area or site established and maintained at safety rest areas
21 for the purpose of informing the public of places of interest within the state and
22 providing such other information as the Department of Tourism may consider
23 desirable;
24 (8) "Interstate system," that portion of the national system of interstate and defense
25 highways located within this state, as officially designated, or as may hereafter be
26 so designated, by the state Department of Transportation and approved by the
27 United States secretary of transportation, pursuant to the provisions of Title 23,
28 United States Code;
29 (9) "Obliterated sign," a sign that is totally or partially painted out so as not to identify
30 a particular product, service or facility;
31 (10) "Obsolete advertising material," material advertising a product or service no longer
32 in use or available;
33 (11) "On-premise sign," a sign identifying an establishment's activities, products or
34 services conducted or available on the property upon which it is located and signs

- 1 advertising the sale or lease of the property upon which they are located;
- 2 (12) "Outdoor advertising," any outdoor sign, display, device, light, figure, drawing,
3 painting, message, plaque, poster, or billboard, which is designed, intended or used
4 to advertise or inform, any part of the advertising or information contents of which
5 is visible from any place on the main-traveled way of the interstate or primary
6 systems;
- 7 (13) "Primary system," that portion of connected main highways, as officially designated,
8 or as may hereafter be so designated, by the state department of transportation,
9 and approved by the United States secretary of transportation, pursuant to the
10 provisions of Title 23, United States Code;
- 11 (14) "Quadrant of an interstate interchange," one of the four quarters created by the
12 intersection of an interstate highway and a crossroad that is not part of the
13 interstate system;
- 14 (15) "Safety rest area," an area or site established and maintained within or adjacent to
15 the right-of-way by or under public supervision or control, for the convenience of
16 the traveling public;
- 17 (16) "Service road," a graded and surfaced road providing public access to property
18 within two thousand five hundred feet of an interstate highway centerline;
- 19 (17) "Specific or defined area," an economic area that would suffer substantial economic
20 hardship by the removal of any directional sign, display, or device, providing
21 directional information about goods and services in the interest of the traveling
22 public;
- 23 (18) "Tourist oriented directional sign, display or device providing directional information
24 about goods and services in the interest of the traveling public," any sign, display,
25 or device giving directional information pertaining to rest stops, food services,
26 lodging, campgrounds, gasoline and automotive services, and natively produced
27 handicraft goods, and informing the traveling public of highway route mileage and
28 site location and reference. Such directional information shall be in existence on
29 such signs as of May 5, 1976;
- 30 (19) "Urban area," as defined by 23 U.S.C. § 101; and
- 31 (20) "Zoned commercial or industrial areas," those areas which are zoned commercial
32 or industrial pursuant to Title 11.

33 **Section 70.** That § 31-29-63 be AMENDED:

31-29-63. Advertising prohibited within specified distances of main-traveled way--Exceptions.

No outdoor advertising may be erected within six hundred sixty feet of the nearest edge of the right-of-way and visible from the main-traveled way or beyond six hundred sixty feet of the nearest edge of the right-of-way visible from the main-traveled way, located outside an urban area and erected with the purpose of its message being read from the main-traveled way of the interstate or primary systems except the following:

- (1) Directional and official signs and notices, as defined by subdivision 31-29-62(6);
- (2) Signs, displays, and devices advertising the sale or lease of property upon which they are located;
- (3) Signs, displays, and devices advertising activities conducted on the property upon which they are located;
- (4) Signs, displays, and devices located in areas which are designated industrial or commercial by local authority as provided by Title 11 and within six hundred sixty feet of an interstate or primary highway;
- (5) Signs, displays, and devices located in unzoned industrial or commercial areas as provided by this chapter and within six hundred sixty feet of an interstate or primary highway;
- (6) Signs, including both official public, and private business signs, for which the department shall make a uniform charge, giving specific information in the interest of the traveling public located within the rights-of-way of the interstate and primary systems in areas at appropriate distances from interchanges or intersections on such systems, the location of which shall be determined by the department, any provision of chapter 31-28 or of this chapter to the contrary notwithstanding;
- (7) Signs lawfully in existence on October 22, 1965, determined by the State Transportation Commission to be landmark signs, including signs on farm structures or natural surfaces, of historic or artistic significance, the preservation of which would be consistent with the purposes of this chapter;
- (8) Warning signs placed by public utilities for the protection of underground utility cables;
- (9) Signs exempt from removal in certain defined areas that are in the specific interest of the traveling public and have qualified for an economic hardship exemption pursuant to ~~§ 31-29-80~~; or
- (10) Signs, displays, and devices advertising the distribution of nonprofit organizations of free coffee to individuals traveling on the interstate system or the primary

1 system. For the purposes of this subdivision, the term, free coffee, includes coffee
2 for which a donation may be made, but is not required.

3 **Section 71.** That § 31-32-12 be AMENDED:

4 **31-32-12. Bridges over ditches and canals excepted from notice**
5 **requirements.**

6 Nothing ~~contained in § 31-32-10 or 31-32-11 shall in § 31-32-10 may~~ be construed
7 as imposing any liability upon the county for any injury sustained by reason of any
8 violation of § 46-8-16 relating to bridges over ditches and canals.

9 **Section 72.** That § 32-4-10.1 be AMENDED:

10 **32-4-10.1. Forfeiture of vehicle, trailer or component part--Return to lawful**
11 **owner not precluded--Assignment of identification number.**

12 Any motor vehicle, trailer, or component part described in § 32-4-10 is deemed
13 contraband and no property right exists in it. If such motor vehicle, trailer, or component
14 part comes into the custody of a law enforcement officer, it shall be forfeited ~~under the~~
15 ~~procedure established in § § 34-20B-85 to 34-20B-87, inclusive.~~ Nothing in this section
16 precludes the return of such a motor vehicle, trailer, or component part to its lawful owner
17 following presentation of satisfactory evidence of ownership and assignment of an
18 identification number by the Department of Revenue under the provisions of § 32-3-22.

19 **Section 73.** That § 32-4-12 be AMENDED:

20 **32-4-12. Impounding vehicle or part believed stolen--Disposition.**

21 If a peace officer has probable cause to believe that a motor vehicle or trailer or
22 any component part of a vehicle is stolen, he shall impound the vehicle or part and notify
23 its lawful owner and the agency to which the theft was reported of its recovery and
24 location.

25 A vehicle or component part which has been impounded pursuant to this section shall
26 be released to its lawful owner if the owner presents satisfactory evidence of his
27 ownership.

28 A vehicle or component part that has been impounded under this section and which
29 has not been claimed within ninety days following notice of recovery to the owner or if the
30 owner cannot be located after a reasonable effort within ninety days following
31 impoundment is forfeited and shall be disposed of ~~in accordance with § 32-30-16.~~

1 **Section 74.** That § 32-4-14 be AMENDED:

2 **32-4-14. Seizure of property on arrest for trafficking--Forfeiture.**

3 Upon the arrest of any person or entity for violation of § 32-4-13, the law
4 enforcement officer may seize all vehicles or vehicle parts, all vehicles and other
5 equipment used to transport such vehicle or vehicle parts, all tools, equipment, and other
6 materials and all real and personal property and all money or other proceeds used or
7 acquired as a result of such violation.

8 Upon the conviction of any person or entity, all items seized shall be forfeited to the
9 state in a manner consistent with §§ 34-20B-85 to 34-20B-88, inclusive.

10 ~~**Section 75. That § 32-5-65 be AMENDED:**~~

11 ~~32-5-65. Special plates for employees of commercial radio or broadcasting companies--Fee--~~
12 ~~Surrender of plates--Violation as misdemeanor.~~

13 ~~Any commercial radio station or broadcasting company that holds an unrevoked and~~
14 ~~unexpired official license issued by the federal communications commission or employees of~~
15 ~~the station or company when requested and approved by the station or the company, and~~
16 ~~who are residents of this state and have complied with all the laws of this state in regards to~~
17 ~~the registration of a motor vehicle, may apply for a set of special plates bearing an inscription~~
18 ~~thereon of the call letters authorized for the station or company radio license by making~~
19 ~~application therefor as provided in § 32-5-66. The special plates are in lieu of the regular~~
20 ~~number plates issued for the motor vehicle. The special plates shall be displayed as set forth~~
21 ~~in § 32-5-98. In addition to the noncommercial license plate fees, an additional fee of ten~~
22 ~~dollars shall be charged for the initial issuance of the special plates. If the federal~~
23 ~~communication commission's license is revoked, the owner shall surrender the special license~~
24 ~~plates to the department. If the employee is no longer employed by the station or the~~
25 ~~broadcasting company, the employee shall surrender the special license plates to the~~
26 ~~department. The secretary shall make the necessary changes in the registration file. The~~
27 ~~owner shall obtain regular number plates. Failure to surrender the special license plates as~~
28 ~~required by this section is a Class 2 misdemeanor.~~

29 ~~**Section 76. That § 32-5-65.1 be AMENDED:**~~

30 ~~32-5-65.1. Special plates for amateur radio licensees--Fee--Surrender of plates--Violation as~~
31 ~~misdemeanor.~~

~~Any owner of a motor vehicle who holds an unrevoked and unexpired official amateur radio license, is a resident of this state and has complied with all the laws of this state in regards to the registration of a motor vehicle, may apply for a set of special plates bearing an inscription thereon of the call letters authorized for the owner's amateur radio license by making application therefor as provided in § 32-5-66. The special plates are in lieu of the regular number plates issued for the motor vehicle. The special plates shall be displayed as set forth in § 32-5-98. In addition to the noncommercial license plate fees, an additional fee of ten dollars shall be charged for the initial issuance of the special license plates. If the amateur radio license is revoked, the owner shall surrender the special license plates to the department. The secretary shall make the necessary changes in the registration file. The owner shall obtain regular number plates. Failure to surrender the special license plates as required by this section is a Class 2 misdemeanor.~~

Section 77. That § 32-10-3.1 be AMENDED:

~~32-10-3.1. Commission abolished--Performance of functions--Collection and forwarding of fees.~~

~~The motor vehicle reciprocity commission is abolished, and all its functions shall be administered by the Department of Revenue as provided by § 1-35-30. The reciprocity and proration administrator shall be the secretary of revenue and all fees collected under the provisions of this chapter shall be forwarded by the secretary to the state treasurer.~~

Section 75. That § 32-10-3.1 be REPEALED.

32-10-3.1. Commission abolished--Performance of functions--Collection and forwarding of fees.

Section 76. That § 32-32-4 be AMENDED:

32-32-4. Use of color for other vehicles prohibited--Repainting of buses formerly used--Violation as petty offense.

No person, persons, or organizations may use the color reserved for school buses as provided in § 32-32-3 in connection with the operation of any other vehicle or vehicles, whether school bus or not, for purposes not connected with or incident to the transportation of school children to and from school and as authorized under § 13-29-1. Any school bus which was formerly used by school districts to transport children shall be

completely repainted in a color other than national school bus yellow or any colors commonly referred to as yellow. A violation of this section is a petty offense.

~~This section does not apply to school buses if rented by or its use has been granted as provided in subdivision 49-28-2(1).~~ This section does not apply to school buses if they are used by a municipality to provide public transportation in times of a local fuel shortage, as determined by the governing body of the municipality.

Section 77. That § 34-16-15 be AMENDED:

**34-16-15. County disposal of dead animal on failure of township to act--
Liability for expense.**

Whenever the owner of a dead animal or the township supervisor fails to act as ~~provided in §§ 34-16-10 to 34-16-12, inclusive,~~ within two days after the knowledge of the fact that such dead animal exists, it shall then be the duty of the superintendent of the county board of health to forthwith cause the body of such dead animal to be burned or buried, and the expense of the same shall be paid by the county, and the amount of such expenses paid by the county shall constitute a lien against the township in which said animal was found and shall be paid by such township, and the township shall in turn recover such expenses from the owner or person in charge of such dead animal.

Section 78. That § 34-20B-70 be AMENDED:

34-20B-70. Property subject to forfeiture.

The following are subject to forfeiture pursuant to chapter 23A-49 and no property right exists in them:

- (1) All controlled drugs and substances and marijuana which have been manufactured, distributed, dispensed, or acquired in violation of the provisions of this chapter or chapter 22-42;
- (2) All raw materials, products, and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, importing, or exporting any controlled drug or substance or marijuana in violation of the provisions of this chapter or chapter 22-42;
- (3) All property which is used, or intended for use, as a container for property described in subdivisions (1) and (2);
- (4) All conveyances including aircraft, vehicles, or vessels, which transport, possess, or conceal, or which are used, or intended for use, to transport, or in any manner facilitate the transportation, sale, receipt, possession, or concealment of marijuana

- 1 in excess of one-half pound or any quantity of any other property described in
2 subdivision (1) or (2), ~~except as provided in §§ 34-20B-71 to 34-20B-73, inclusive.~~
3 This subdivision includes those instances in which a conveyance transports,
4 possesses or conceals marijuana or a controlled substance as described herein
5 without the necessity of showing that the conveyance is specifically being used to
6 transport, possess, or conceal or facilitate the transportation, possession, or
7 concealment of marijuana or a controlled substance in aid of any other offense;
8 (5) All books, records, and research, including formulas, microfilm, tapes, and data
9 which are used, or intended for use, in violation of this chapter;
10 (6) Any funds or other things of value used for the purposes of unlawfully purchasing,
11 attempting to purchase, distributing, or attempting to distribute any controlled drug
12 or substance or marijuana;
13 (7) Any assets, interest, profits, income, and proceeds acquired or derived from the
14 unlawful purchase, attempted purchase, distribution, or attempted distribution of
15 any controlled drug or substance or marijuana.

16 Property described in subdivision (1) shall be deemed contraband and shall be
17 summarily forfeited to the state, property described in subdivisions (2), (3), (5), (6), and
18 (7) is subject to forfeiture under the terms of § 23A-49-14, and property described in
19 subdivision (4) is subject to forfeiture under the terms of § 23A-49-15.

20 **Section 79.** That § 34-23B-6 be AMENDED:

21 **34-23B-6. Referral of pregnant woman to alcohol or drug prevention or**
22 **treatment program--Immunity from liability.**

23 Any physician, physician's assistant, nurse, certified nurse practitioner, certified
24 nurse midwife, counselor, social worker, licensed or registered child welfare provider,
25 employee or volunteer of a domestic abuse center, chemical dependency counselor, or
26 safety sensitive position ~~as defined in subdivision 23-3-64(2)~~ who provides services to a
27 pregnant woman may make a referral to a prevention or treatment program accredited
28 pursuant to chapter 34-20A if the provider has information that a pregnant woman is
29 engaging in the abusive use of alcohol or use of any controlled drug or substance not
30 lawfully prescribed by a practitioner as authorized by chapter 22-42 or 34-20B. Any such
31 provider, who, in good faith, makes a referral to a prevention or treatment program
32 accredited pursuant to chapter 34-20A of a pregnant woman engaging in abusive use of
33 alcohol, abusive use of a lawfully prescribed controlled substance, or use of any controlled
34 drug or substance not lawfully prescribed by a practitioner as authorized by chapter 22-

42 or 34-20B, is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity with respect to participation in any judicial proceeding resulting from the referral. This immunity also extends to any public official who in good faith is involved in the investigation of such conduct or to any person described in this section who in good faith cooperates with any public official in an investigation. Any referral pursuant to this section is permissive and nothing in this section requires the making of any referral.

Section 80. That § 34-31A-35 be AMENDED:

34-31A-35. Change of district boundaries--Prior rights unimpaired--Liability for debts.

The boundaries of any rural fire protection district organized under the provisions of this chapter may be changed in the manner prescribed by §§ 34-31A-5 to ~~34-31A-11, inclusive~~ through 34-31A-9, but the changes of boundaries of any such district may not impair or affect its organization or its right in or to property; nor may it impair, affect or discharge any contract, obligation, lien, or charge for or upon which it might be liable had such change of boundaries not been made. Any portion or area of land which was part of a rural fire district, organized under §§ 34-31A-5 to ~~34-31A-11, inclusive~~ through 34-31A-9, and which is annexed into a bordering municipality, is liable for any indebtedness incurred while within the boundaries of the fire district. Nothing in this section may preclude a municipality, by ordinance, when annexing land within a rural fire protection district, of assuming a portion or all of the indebtedness on the annexed land which is a result of being in the rural fire protection district.

Section 81. That § 34-48A-10 be AMENDED:

34-48A-10. Special permits for emergency movement of persons and property in lieu of other permits.

The Governor may, by executive order, provide for the issuance of special permits for the movement of persons, commodities, and equipment in the event of disaster or impending disaster from any cause to the extent that the civilian or livestock population, or any part thereof, will be deprived of necessary, and essential food, fuel, supplies, and equipment. The special permits herein provided shall be issued without fee and shall be in lieu of compensation for the unusual use of the highways and in lieu of those permits required by ~~§§ 10-47A-65 and 32-22-38~~ § 32-22-38.

1 **Section 82.** That § 34A-5-40 be AMENDED:

2 **34A-5-40. Certification of unpaid charges and tax levies--Collection with**
3 **real estate taxes--Tax sales.**

4 The board of trustees may cause the amount of any charges, and interest and
5 penalties on the charges, for sewer service rendered or made available to any land within
6 the district, which are due and unpaid on the first day of October in each year to be
7 certified by the clerk of the district to the county auditor in the manner provided in § 10-
8 12-7 together with any taxes levied by the district for corporate purposes. All amounts so
9 certified shall be inserted by the county auditor upon the tax list of the current year and
10 shall be payable and delinquent at the same time and shall incur penalty and interest and
11 shall be collected by the same procedure as real estate taxes on the same property. ~~In~~
12 ~~the event of a tax sale or the issuance of a tax deed, the provisions of §§ 9-43-39 to 9-~~
13 ~~43-41, inclusive, §§ 9-43-112 and 9-43-113 shall apply to all amounts so certified and~~
14 ~~then delinquent, in the same manner as delinquent installments of special assessments.~~

15 **Section 83.** That § 34A-6-66 be AMENDED:

16 **34A-6-66. Promulgation of rules for waste tire stockpiling and processing**
17 **facilities.**

18 ~~Upon completion of the study pursuant to § 34A-6-65, the~~ The department shall
19 determine the number of stockpiling facilities that are necessary; and the board shall
20 promulgate rules pursuant to chapter 1-26 for waste tire stockpiling and processing
21 facilities. The rules shall include the following:

- 22 (1) The prohibition of burning within one hundred yards of a tire stockpile;
- 23 (2) The maximum height, width, and length of a tire stockpile;
- 24 (3) Plans to control mosquitos and rodents;
- 25 (4) A facility closure plan;
- 26 (5) Specifications for fire lanes between stockpiles;
- 27 (6) Limitation of the total number of tires allowed at a single stockpile site;
- 28 (7) Criteria for the issuance of permits to qualified waste tire stockpiling and processing
29 facilities. No waste tire stockpiling or processing may be done without a permit; and
- 30 (8) Appropriate waste tire processing methods.

31 **Section 84.** That § 34A-6-70 be AMENDED:

1 **34A-6-70. Solid waste evaluation.**

2 Each county and first class municipality shall prepare or have prepared, on or
3 before January 1, 1993, a solid waste evaluation coordinated with the state solid waste
4 management plan ~~provided for in § 34A-6-1.5.~~ The evaluation shall cover a fifteen-year
5 time period, shall serve as the basis for county and municipal decisions on the need for
6 facilities, and shall be provided to the board for its consideration in determining whether
7 to issue facility permits under § 34A-6-1.13. The evaluation shall include an analysis of
8 the current and projected volume of solid waste, disposal capacity including all existing
9 and planned facilities, the potential for source reduction, reuse, recycling, resource
10 recovery, and shared and regional recycling and waste management facilities. The
11 evaluation shall include a full accounting of the true and total cost, including the long-
12 term costs, of all options analyzed in the evaluation. Counties and municipalities subject
13 to this section shall consider in their solid waste evaluation, 40 CFR parts 257 and 258 of
14 the environmental protection agency solid waste disposal criteria commonly known as
15 "RCRA subtitle D regulations," as finally adopted and published in the Federal Register on
16 October 9, 1991, and as amended to January 1, 2011; the statewide comprehensive solid
17 waste management plan; and all rules promulgated by the board.

18 **Section 85.** That § 34A-13-4 be AMENDED:

19 **34A-13-4. Immediate corrective action by department.**

20 To assure an adequate response to a release, the director may take corrective
21 action ~~without following the procedures in §§ 34A-13-2 and 34A-13-3~~ if the department
22 determines that the release constitutes a clear and immediate danger requiring immediate
23 action to prevent, minimize, or mitigate damage to the public health and welfare or the
24 environment. Before taking any action pursuant to this section, the department shall make
25 all reasonable efforts, taking into consideration the urgency of the situation, to order and
26 permit a responsible person to take a corrective action and notify the owner of real
27 property where the corrective action is to be taken.

28 **Section 86.** That § 34A-13-18 be AMENDED:

29 **34A-13-18. Deposit and crediting of revenue.**

30 Revenue from the following sources shall be deposited in the state treasury and
31 credited to a petroleum release compensation fund:

- 32 (1) Any fees imposed by § 34A-13-20;
33 (2) Any money recovered by the fund pursuant to § 34A-13-9, including administrative

- 1 expenses, and any money paid under an agreement, stipulation, or settlement;
- 2 (3) Any interest attributable to investment of money in the fund;
- 3 (4) Any money received by the secretary of environment and natural resources in the
- 4 form of gifts, grants other than federal grants, reimbursements, or appropriations
- 5 from any source intended to be used for the purposes of the fund;
- 6 (5) Any money or other assets received by the secretary of environment and natural
- 7 resources in connection with any loan from the fund or any account in the fund ~~or~~
- 8 ~~otherwise in connection with any financing pursuant to §§ 34A-14-3 to 34A-14-26,~~
- 9 ~~inclusive.~~

10 **Section 87.** That § 36-11A-4 be AMENDED:

11 **36-11A-4. Pharmacy distributor determined.**

12 A pharmacy distributor is any pharmacy or hospital pharmacy that is engaged in

13 the delivery or distribution of prescription drugs either to another pharmacy or to another

14 person or entity, including to a wholesale drug distributor ~~as defined in § 36-11A-3,~~ that

15 is engaged in the delivery or distribution of prescription drugs and who is involved in the

16 actual, constructive, or attempted transfer of a drug in this state to other than the ultimate

17 consumer, if the financial value of the drugs so delivered or distributed is equivalent to at

18 least five percent of the total gross sales of the pharmacy.

19 **Section 88.** That § 36-11A-23 be AMENDED:

20 **36-11A-23. Normal distribution channel determined.**

21 For the purposes of ~~§§ 36-11A-20 to 35-11A-46, inclusive through 36-11A-46,~~ a

22 normal distribution channel is a chain of custody for a prescription drug that goes from a

23 manufacturer of the prescription drug, or from that manufacturer to that manufacturer's

24 co-licensed partner, or from that manufacturer to that manufacturer's third-party logistics

25 provider, or from that manufacturer to that manufacturer's exclusive distributor, directly

26 or by drop shipment, to:

- 27 (1) A pharmacy to a patient or other designated persons authorized by law to dispense
- 28 or administer such drug to a patient;
- 29 (2) A wholesale distributor to a pharmacy to a patient or other designated persons
- 30 authorized by law to dispense or administer such drug to a patient;
- 31 (3) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy
- 32 warehouse's intracompany pharmacy to a patient or other designated persons
- 33 authorized by law to dispense or administer such drug to a patient; or

- 1 (4) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany
2 pharmacy to a patient or other designated persons authorized by law to dispense
3 or administer such drug to a patient.

4 **Section 89.** That § 36-11A-34 be AMENDED:

5 **36-11A-34. Returns or exchanges of prescription drugs.**

6 A wholesale distributor shall receive prescription drug returns or exchanges from a
7 pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the
8 agreement between the wholesale distributor and the pharmacy or chain pharmacy
9 warehouse. Returns of expired, damaged, recalled, or otherwise nonsaleable
10 pharmaceutical products shall be distributed by the receiving wholesale distributor only to
11 either the original manufacturer or a third party returns processor. ~~The returns or~~
12 ~~exchanges of prescription drugs, saleable or otherwise, including any redistribution by a~~
13 ~~receiving wholesaler, are not subject to the requirement of § 36-11A-39, so long as~~
14 ~~prescription drugs are exempt from tracing requirements under DSCSA.~~ Wholesale
15 distributors and pharmacies shall be held accountable for administering their returns
16 process and ensuring that the aspects of this operation are secure and do not permit the
17 entry of adulterated and counterfeit product.

18 **Section 90.** That § 36-31-6 be AMENDED:

19 **36-31-6. Application for licensure--Requirements.**

20 Any applicant applying for a license as an occupational therapist or as an
21 occupational therapy assistant shall file a written application provided by the board,
22 showing to the satisfaction of the board that he meets the following requirements:

- 23 (1) Residence: Applicant need not be a resident of this state;
24 (2) Character: Applicant shall be of good moral character;
25 (3) Education: Applicant shall present evidence satisfactory to the board of having
26 successfully completed the academic requirements of an educational program in
27 occupational therapy recognized by the board:
28 (a) The occupational therapy educational program shall be accredited by the
29 committee on allied health education and accreditation/American Medical
30 Association in collaboration with the American Occupational Therapy
31 Association;
32 (b) The occupational therapy assistant educational program shall be approved by
33 the American Occupational Therapy Association.

- (4) Experience: Applicant shall submit to the board evidence of having successfully completed a period of supervised fieldwork experience arranged by the recognized educational institution where he met the academic requirements or by the nationally recognized professional association:
- (a) For an occupational therapist, a minimum of six months of supervised fieldwork experience is required;
 - (b) For an occupational therapy assistant, a minimum of two months of supervised fieldwork experience is required.
- (5) Examination: An applicant for licensure as an occupational therapist or as an occupational therapy assistant shall pass an examination approved by the board upon recommendation by the occupational therapy committee;
- (6) Certification: In order to apply physical agent modalities ~~as defined in § 36-3-1~~, an occupational therapist or occupational therapist assistant shall be qualified pursuant to this subdivision, as follows:
- (a) Has successfully completed twenty-five hours of American Occupational Therapy Association or American Physical Therapy Association approved education covering physical agent modalities and completed a supervised mentorship to include five case studies on each class of modality to be incorporated into patient care;
 - (b) Is certified as a hand therapist by the Hand Therapy Certification commission or other equivalent entity recognized by the board; or
 - (c) Has completed education during a basic occupational therapy educational program that included demonstration of competencies on each class of the physical agent modalities.
- A supervising therapist or mentor may be a physical therapist, a certified hand therapist, or an occupational therapist who has completed a supervised mentorship and has five years of clinical experience utilizing each class of physical agent modalities; or an occupational therapist who has graduated from an occupational therapy program whose curriculum includes physical agent modality education.

Section 91. That § 37-2-16 be AMENDED:

37-2-16. Violation as misdemeanor.

A violation of any provision in §§ 37-2-5 to 37-2-25, inclusive, and §§ 37-2-30, 37-2-31, and ~~32-2-33~~ 37-2-33 is a Class 1 misdemeanor.

Section 92. That § 37-23-4 be AMENDED:

37-23-4. Powers and duties of attorney general.

The attorney general shall, in addition to other powers and duties vested in him by this or any other law:

- (1) Receive and forward to appropriate agencies of the state for final processing and determination of complaints from any citizen of South Dakota relating to consumer affairs. It shall be the further responsibility of that agency to maintain records indicating the final disposition of any matters so referred;
- (2) Advise the Governor as to all matters affecting the interests of the public consumer;
- (3) Review state policies and programs of primary importance to consumers or to meet consumer needs which can be met appropriately through state action;
- (4) Consider the aspects of state policies, programs, and operations wherein the view of consumers should be made available to state officials and the manner in which such views can be communicated to appropriate departments and agencies;
- (5) Recommend the enactment of such legislation as he deems necessary to protect and promote the interest of the public as consumers;
- (6) Appear before governmental departments, agencies, and commissions to represent and be heard on behalf of consumer interests, except before the interstate commerce commission, where specific authority to represent the public interest has been vested in the public utilities commission ~~pursuant to § 49-3-27;~~
- (7) Cooperate with and establish necessary liaison with consumer organizations;
- (8) Assist in the coordination of federal, state, and municipal activities relating to consumer affairs; and
- (9) Do such other acts which may be necessary to the exercise of powers and functions under this chapter.

Section 93. That § 41-6-30 be AMENDED:

41-6-30. Nonresident predator/varmint license--Privileges--When license not required--Violation as misdemeanor.

Except as provided in this section, it is a Class 2 misdemeanor for a nonresident to hunt, take, or kill species defined as a predator/varmint in § 41-1-1 without a nonresident predator/varmint license or in violation of the conditions of the license or the rules of the Game, Fish and Parks Commission.

1 A nonresident predator/varmint license, ~~notwithstanding the provisions of § 41-6-24,~~
2 allows a nonresident to take or kill species defined as a predator/varmint in § 41-1-1,
3 except by means of aerial hunting or as prohibited by statute or rule.

4 However, if a nonresident possesses a nonresident small game license, a nonresident
5 waterfowl license, a nonresident big game license, a nonresident shooting preserve license
6 while on a licensed shooting preserve, or a nonresident turkey license as provided in § 41-
7 6-17, 41-6-18.1, 41-6-20, or 41-6-28, the nonresident need not acquire the nonresident
8 predator/varmint license as provided in this section to hunt the species enumerated by
9 this section in the manner and places permitted. A nonresident small game license, a
10 nonresident waterfowl license, a nonresident big game license, or a nonresident turkey
11 license is valid for hunting those animals permitted by the nonresident predator/varmint
12 license from date of purchase until the end of the license year as provided by rules
13 promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26.
14 However, a nonresident shooting preserve license is valid for hunting species defined as
15 a predator/varmint in § 41-1-1 on a licensed shooting preserve during the shooting
16 preserve season.

17 **Section 94.** That § 41-6-61 be AMENDED:

18 **41-6-61. Licenses to be issued by secretary--Discretionary licenses.**

19 Licenses under §§ 41-6-25 to 41-6-28, inclusive, under §§ 41-6-31 to 41-6-33,
20 inclusive, under §§ 41-6-38 to 41-6-43, inclusive, ~~and under § 41-6-46,~~ may be issued
21 by the secretary of game, fish and parks. The granting of licenses provided under §§ 41-
22 6-32 to 41-6-33, inclusive, and under §§ 41-6-39 to 41-6-43, inclusive, shall be in the
23 discretion of the secretary.

24 **Section 95.** That § 41-6-70.1 be AMENDED:

25 **41-6-70.1. Portion of license fees to be used for certain designated**
26 **purposes.**

27 A portion of the license fees collected by the Department of Game, Fish and Parks
28 ~~that would previously have been paid to counties pursuant to § 41-6-70,~~ in an amount
29 equal to one million thirty-three thousand two hundred sixty-nine dollars and ten cents
30 per year, shall be used only for the following purposes: administration of licensing services
31 provided by the department; increased contribution to the animal damage control fund as
32 provided in § 40-36-11; development of public access, other than fee-title purchase of
33 land, for hunting and fishing; wildlife habitat improvements; management of wildlife

1 damage; or to be credited toward a reduction of resident license fees. The Game, Fish and
2 Parks Commission shall approve amounts allocated to the specific purposes identified in
3 this section.

4 **Section 96.** That § 42-7-89 be AMENDED:

5 **42-7-89. Payments to state in lieu of other taxes.**

6 The payments required in §§ 42-7-63, 42-7-79, 42-7-85, ~~42-7-88~~, and 42-7-102
7 to be made by the licensee to the state treasurer are in lieu of all other or further excise
8 or occupational taxes to the state or any county, municipality, or other political
9 subdivision.

10 **Section 97.** That § 42-8-41 be AMENDED:

11 **42-8-41. Operation of boat or departure from premises without required**
12 **equipment prohibited.**

13 No person may operate or give permission for the operation of a boat which is not
14 equipped as required by rules adopted pursuant to ~~§ 42-8-1.1~~ § 32-3A-1. Neither the
15 owner of a boat, nor the owner's agent or employee, may permit any motorboat or any
16 boat to depart from the owner's premises unless it is provided, either by owner or renter,
17 with the equipment required pursuant to such rules. A violation of this section is a Class
18 2 misdemeanor.

19 **Section 98.** That § 42-8-42 be AMENDED:

20 **42-8-42. Muffler required--Use of cutouts prohibited--Racing boats**
21 **excepted.**

22 The exhaust of every internal combustion engine used on any motorboat shall be
23 effectively muffled by equipment so constructed and used as to muffle the noise of the
24 exhaust in a reasonable manner. The use of cutouts is prohibited, except for racing boats
25 competing in a regatta or boat race approved as provided by rules adopted pursuant to
26 ~~§ 42-8-1.1~~ § 32-3A-1, and for such racing boats while on trial runs, during a period not
27 to exceed forty-eight hours immediately preceding a regatta or race and for motorboats
28 while competing in official trials for speed records during a period not to exceed forty-eight
29 hours immediately following a regatta or race. A violation of this section is a Class 2
30 misdemeanor.

31 **Section 99.** That § 43-15B-7 be AMENDED:

43-15B-7. Sale of unregistered project prohibited--Exception--Issuance of restricted licenses.

No person may offer to sell in this state any time-share project, or offer to sell outside the state any time-share in a time-share project located within this state without first registering the time-share project with the South Dakota Real Estate Commission. The sale or transfer of a time-share project by an owner other than the developer or sales agent is exempt from this chapter. The Real Estate Commission may issue restricted brokers' or salesmen's licenses for time share brokers or salesmen ~~pursuant to § 36-21-28.1~~ in accordance with rules promulgated under § 36-21A-47.

Section 100. That § 46A-10A-116 be AMENDED:

46A-10A-116. Powers and duties of board of trustees.

The board of trustees may control, supervise, and manage the district. Subject to the legal controls for drainage management under § 46A-10A-20, the board of trustees may, in conformity with any applicable local, state, and federal laws, rules, ordinances, and regulations:

- (1) Clean out, repair, and maintain an existing drainage ditch;
- (2) Deepen, widen, or enlarge a drainage ditch;
- (3) Create a new drainage ditch, or relocate an existing drainage ditch;
- (4) Extend an existing drainage ditch;
- (5) Acquire lands for right-of-way for ditches by purchase or condemnation or any other lawful method in conformity with chapter 21-35 and any other provision of state law;
- (6) Repair levies, dikes, and barriers for the purpose of drainage;
- (7) Regulate the flow and direction of water to prevent downstream flooding;
- (8) Employ or contract with an engineer, hydrologist, surveyor, appraiser, assessor, legal counsel, or any other specialists as they deem necessary to carry out the powers and duties conferred by §§ 46A-10A-98 to 46A-10A-123, inclusive;
- (9) Let contracts for construction, maintenance, repair, or other necessary work pursuant to the provisions of chapters 5-18A and 5-18B and § 46A-10A-75. No member of the board of trustees may have any interest in any contract or employment entered into pursuant to this subdivision or subdivision (8);
- (10) Request the county commission or township board of supervisors to replace, repair, remove, and enlarge public highway culverts and bridges, pursuant to §§ 46A-10A-76, 31-12-19, 31-14-2, and 31-14-27;

- 1 (11) Grant a request by a landowner to annex the landowner's land to the district and
2 apportion the costs of clean out, maintenance, or construction according to the
3 benefits received and subject to approval by a majority of the eligible landowners
4 voting in a special election held by the board of trustees in conjunction with the
5 district's annual election; and
- 6 (12) Reclassify benefits and apportion costs of clean out, extension, enlargement,
7 repairs, or improvements among landowners benefitting therefrom, if the
8 landowners have land located within the drainage district.

9 **Section 101.** That § 46A-14-87 be AMENDED:

10 **46A-14-87. State Conservation Commission determination on proposed**
11 **dissolution.**

12 After the public hearing required by ~~§ 46-14-86~~ § 46A-14-86, the State
13 Conservation Commission shall determine whether the proposed dissolution is to be
14 allowed. In making its determination, the commission shall consider written and verbal
15 reports by the watershed district board, the public attitude displayed at the public hearing,
16 and all other information the members of the commission deem relevant. At least one
17 watershed district board member shall be present at the commission meeting to testify.

18 **Section 102.** That § 47-1A-120 be AMENDED:

19 **47-1A-120. Requirements for documents.**

20 Any document satisfying the following requirements, and the requirements of any
21 other section that adds to or varies these requirements, is entitled to be filed by the Office
22 of the Secretary of State:

- 23 (1) The document is required or permitted to be filed in the Office of the Secretary of
24 State;
- 25 (2) The document contains the information required by this chapter;
- 26 (3) The document is typewritten or printed or, if electronically transmitted, is in a
27 format that can be retrieved or reproduced in typewritten or printed form;
- 28 (4) The document is in the English language. A corporate name need not be in English
29 if written in English letters or in English letters in combination with Arabic or Roman
30 numerals. The certificate of existence required of foreign corporations need not be
31 in English if accompanied by a reasonably authenticated English translation;
- 32 (5) The document is executed by one of the following persons:
- 33 (a) By the chair of the board of directors of a domestic or foreign corporation, by

- 1 its president, or by another of its officers;
- 2 (b) If directors have not been selected or the corporation has not been formed,
- 3 by an incorporator; or
- 4 (c) If the corporation is in the hands of a receiver, trustee, or other court-
- 5 appointed fiduciary, by that receiver, trustee, or court-appointed fiduciary;
- 6 (6) The person executing the document has signed it and has stated beneath or
- 7 opposite the signature the person's name and the capacity in which the person
- 8 signs. The document may, but need not, contain a corporate seal, attestation,
- 9 acknowledgment, or verification;
- 10 (7) If the Office of the Secretary of State has prescribed a mandatory form for the
- 11 document under § 47-1A-121, the document is in or on the prescribed form;
- 12 (8) The document is delivered to the Office of the Secretary of State for filing. Delivery
- 13 may be made by electronic transmission if and to the extent permitted by the Office
- 14 of the Secretary of State. If the document is filed in typewritten or printed form and
- 15 not transmitted electronically, the Office of the Secretary of State may require one
- 16 exact or conformed copy to be delivered with the document, ~~except as provided in~~
- 17 ~~§§ 47-1A-503 and 47-1A-1510~~; and
- 18 (9) When the document is delivered to the Office of the Secretary of State for filing,
- 19 the correct filing fee, and any license fee, or penalty required to be paid at that time
- 20 by this chapter or other law is paid or provision for payment made in a manner
- 21 permitted by the Office of the Secretary of State.

22 **Section 103.** That § 47-1A-120.1 be AMENDED:

23 **47-1A-120.1. Terms of plan or filed document dependent on extrinsic facts--**

24 **Applicable provisions.**

25 If a provision of this chapter permits any of the terms of a plan or a filed document

26 to be dependent on facts objectively ascertainable outside the plan or filed document, the

27 following provisions apply:

- 28 (1) The manner in which the facts will operate upon the terms of the plan or filed
- 29 document shall be set forth in the plan or filed document;
- 30 (2) The facts may include:
- 31 (a) Any of the following that are available in a nationally recognized news or
- 32 information medium either in print or electronically: statistical or market
- 33 indices, market prices of any security or group of securities, interest rates,
- 34 currency exchange rates, or similar economic or financial data;

- (b) A determination or action by any person, including the corporation or any other party to a plan or filed document; or
- (c) The terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

For the purposes of this section, a filed document is a document filed with the Office of the Secretary of State under any provision of this chapter except §§ 47-1A-1502 ~~to through 47-1A-1601, inclusive, or §§ 47-1A-1621.1 to 47-1A-1701, inclusive,~~ and a plan is a plan of domestication, nonprofit conversion, entity conversion, merger, or share exchange.

Section 104. That § 47-1A-128 be AMENDED:

47-1A-128. Certificate of existence.

Any person may apply to the Office of the Secretary of State to furnish a certificate of existence for a domestic corporation or a certificate of authorization for a foreign corporation. A certificate of existence or authorization shall set forth:

- (1) The domestic corporation's corporate name or the foreign corporation's corporate name used in this state;
- (2) That the domestic corporation is duly incorporated under the law of this state, the date of its incorporation, and the period of its duration if less than perpetual; or that the foreign corporation is authorized to transact business in this state;
- (3) That all fees, taxes, and penalties owed to this state have been paid, if:
 - (a) Payment is reflected in the records of the Office of the Secretary of State; and
 - (b) Nonpayment affects the existence or authorization of the domestic or foreign corporation;
- (4) That its most recent annual report ~~required by § 47-1A-1621.1~~ has been delivered to the Office of the Secretary of State;
- (5) That articles of dissolution have not been filed; and
- (6) Other facts of record in the Office of the Secretary of State that may be requested by the applicant.

Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the Office of the Secretary of State may be relied upon as conclusive evidence that the domestic or foreign corporation is in existence or is authorized to transact business in this state.

Section 105. That § 47-1A-140 be AMENDED:

47-1A-140. Definitions.

Terms used in this chapter mean:

- (1) "Articles of incorporation," the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the Office of the Secretary of State under any provision of this chapter ~~except §§ 47-1A-1621.1 to 47-1A-1701, inclusive.~~ If an amendment of the articles or any other document filed under this chapter restates the articles in their entirety, from that time forward the articles do not include any prior documents;
- (2) "Authorized shares," the shares of all classes a domestic or foreign corporation is authorized to issue;
- (3) "Conspicuous," so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous;
- (4) "Corporation," "domestic corporation," or "domestic business corporation," any corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this chapter;
- (5) "Deliver," or "delivery," any method of delivery used in conventional commercial practice, including delivery by hand, mail, commercial delivery, and electronic transmission;
- (6) "Distribution," any direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise;
- (7) "Domestic unincorporated entity," an unincorporated entity whose internal affairs are governed by the laws of this state;
- (8) "Electronic transmission," or "electronically transmitted," any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient;
- (9) "Eligible entity," any domestic or foreign unincorporated entity;
- (10) "Eligible interest," an interest or membership as defined in this section;
- (11) "Employee," includes any officer but not a director. However, a director may accept duties that make the director also an employee;

- (12) "Entity," includes domestic and foreign business corporation; estate; trust; domestic and foreign unincorporated entity; and state government, the United States government, and any foreign government;
- (13) "Facts objectively ascertainable," outside of a filed document or plan as defined in §§ 47-1A-120.1 to 47-1A-120.3, inclusive;
- (14) "Filing entity," any unincorporated entity that is of a type that is created by filing a public organic document;
- (15) "Foreign corporation," any corporation incorporated under a law other than the law of this state, which would be a business corporation if incorporated under the laws of this state;
- (16) "Foreign nonprofit corporation," any corporation incorporated under a law other than the law of this state, which would be a nonprofit corporation if incorporated under the laws of this state;
- (17) "Foreign unincorporated entity," any unincorporated entity whose internal affairs are governed by an organic law of a jurisdiction other than this state;
- (18) "Governmental subdivision," includes authority, county, district, and municipality;
- (19) "Individual," any natural person;
- (20) "Interest," either or both of the following rights under the organic law of an unincorporated entity:
- (a) The right to receive distributions from the entity either in the ordinary course or upon liquidation; or
 - (b) The right to receive notice or vote on issues involving its internal affairs, other than as an agent, assignee, proxy, or person responsible for managing its business and affairs;
- (21) "Interest holder," any person who holds of record an interest;
- (22) "Membership," the rights of a member in a domestic or foreign nonprofit corporation;
- (23) "Nonfiling entity," any unincorporated entity that is of a type that is not created by filing a public organic document;
- (24) "Nonprofit corporation," or "domestic nonprofit corporation," any corporation incorporated under the laws of this state and subject to the provisions of chapters 47-22 to 47-28, inclusive;
- (25) "Organic document," any public organic document or a private organic document;
- (26) "Organic law," the statute governing the internal affairs of a domestic or foreign business or nonprofit corporation or unincorporated entity;

- (27) "Owner liability," personal liability for a debt, obligation, or liability of a domestic or foreign business or nonprofit corporation or unincorporated entity that is imposed on a person:
- (a) Solely by reason of the person's status as a shareholder, member, or interest holder; or
 - (b) By the articles of incorporation, bylaws, or an organic document under a provision of the organic law of an entity authorizing the articles of incorporation, bylaws, or an organic document to make one or more specified shareholders, members, or interest holders liable in their capacity as shareholders, members, or interest holders for all or specified debts, obligations, or liabilities of the entity;
- (28) "Person," includes an individual and an entity;
- (29) "Principal office," the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located;
- (30) "Private organic document," any document, other than the public organic document, if any, that determines the internal governance of an unincorporated entity. If a private organic document has been amended or restated, the term means the private organic document as last amended or restated;
- (31) "Public organic document," the document, if any, that is filed of public record to create an unincorporated entity. If a public organic document has been amended or restated, the term means the public organic document as last amended or restated;
- (32) "Proceeding," includes civil suit and criminal, administrative, and investigatory action;
- (33) "Record date," the date established under §§ 47-1A-601 to 47-1A-603, inclusive, or §§ 47-1A-701 to 47-1A-747, inclusive, on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed;
- (34) "Secretary," the corporate officer to whom the board of directors has delegated responsibility under § 47-1A-840 for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation;
- (35) "Shareholder," the person in whose name shares are registered in the records of a

- 1 corporation or the beneficial owner of shares to the extent of the rights granted by
2 a nominee certificate on file with a corporation;
- 3 (36) "Shares," the units into which the proprietary interests in a corporation are divided;
- 4 (37) "Sign," or "signature," includes any manual, facsimile, conformed, or electronic
5 signature;
- 6 (38) "State," when referring to a part of the United States, includes a state and
7 commonwealth, and their agencies and governmental subdivisions, and a territory
8 and insular possession, and their agencies and governmental subdivisions, of the
9 United States;
- 10 (39) "Subscriber," any person who subscribes for shares in a corporation, whether before
11 or after incorporation;
- 12 (40) "Unincorporated entity," any organization or artificial legal person that either has a
13 separate legal existence or has the power to acquire an estate in real property in
14 its own name and that is not any of the following: a domestic or foreign business
15 or nonprofit corporation, an estate, a trust, a state, the United States, or a foreign
16 government. The term includes a general partnership, limited liability company,
17 limited partnership, business trust, joint stock association, and incorporated
18 nonprofit association;
- 19 (41) "United States," includes district, authority, bureau, commission, department, and
20 any other agency of the United States;
- 21 (42) "Voting group," all shares of one or more classes or series that, under the articles
22 of incorporation or this chapter, are entitled to vote and be counted together
23 collectively on a matter at a meeting of shareholders. All shares entitled by the
24 articles of incorporation or this chapter to vote generally on the matter are for that
25 purpose a single voting group;
- 26 (43) "Voting power," the current power to vote in the election of directors.

27 **Section 106.** That § 47-1A-403 be AMENDED:

28 **47-1A-403. Foreign corporation--Registration of corporate name.**

29 A foreign corporation may register its corporate name, or its corporate name with
30 any addition required by §§ 47-1A-1506.1 to ~~47-1A-1507~~ 47-1A-1506.4, if the
31 name is distinguishable upon the records of the Office of the Secretary of State from the
32 corporate names that are not available under § 47-1A-401.1. A foreign corporation
33 registers its corporate name, or its corporate name with any addition required by §§ 47-

1A-1506.1 to 47-1A-1507, inclusive, through 47-1A-1506.4 by delivering to the Office of the Secretary of State for filing an application:

- (1) Setting forth its corporate name, or its corporate name with any addition required by §§ 47-1A-1506.1 to 47-1A-1507, inclusive, through 47-1A-1506.4 the state or country and date of its incorporation, and a brief description of the nature of the business in which it is engaged; and
- (2) Accompanied by a certificate of existence, or a document of similar import, from the state or country of incorporation.

The name is registered for the applicant's exclusive use upon the effective date of the application.

Section 107. That § 47-1A-1520 be AMENDED:

47-1A-1520. Withdrawal of foreign corporation.

A foreign corporation authorized to transact business in this state may not withdraw from this state until it obtains a certificate of withdrawal from the Office of the Secretary of State. A foreign corporation authorized to transact business in this state may apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
- (2) That it is not transacting business in this state and that it surrenders its authority to transact business in this state;
- (3) That it revokes the authority of its registered agent to accept service on its behalf; and
- (4) The address of the corporation's principal office.

After the withdrawal of the corporation is effective, service of process is perfected pursuant to § 47-1A-1510 in accordance with chapter 59-11.

Section 108. That § 47-1A-1522 be AMENDED:

47-1A-1522. Withdrawal upon conversion to a nonfiling entity.

A foreign business corporation authorized to transact business in this state that converts to a domestic or foreign nonfiling entity shall apply for a certificate of withdrawal by delivering an application to the secretary of state for filing. The application must set forth:

- (1) The name of the foreign business corporation and the name of the state or country

- 1 under whose law it was incorporated before the conversion;
- 2 (2) That it surrenders its authority to transact business in this state as a foreign
- 3 business corporation;
- 4 (3) The type of unincorporated entity to which it has been converted and the jurisdiction
- 5 whose laws govern its internal affairs;
- 6 (4) If it has been converted to a foreign unincorporated entity:
- 7 (a) That it revokes the authority of its registered agent to accept service on its
- 8 behalf; and
- 9 (b) The address of the entity's principal office.

10 After the withdrawal under this section of a corporation that has converted to a foreign

11 unincorporated entity is effective, service of process is perfected ~~pursuant to § 47-1A-~~

12 ~~1510~~ in accordance with chapter 59-11.

13 After the withdrawal under this section of a corporation that has converted to a

14 domestic unincorporated entity is effective, service of process shall be made on the

15 unincorporated entity in accordance with the regular procedures for service of process on

16 the form of unincorporated entity to which the corporation was converted.

17 **Section 109.** That § 47-1A-1531 be AMENDED:

18 **47-1A-1531. Procedure for and effect of revocation.**

19 If the Office of the Secretary of State determines that one or more grounds exist

20 under § 47-1A-1530 for revocation of a certificate of authority, the Office of the Secretary

21 of State shall serve the foreign corporation with written notice of that determination ~~under~~

22 ~~§ 47-1A-1510~~. If the foreign corporation does not correct each ground for revocation or

23 demonstrate to the reasonable satisfaction of the Office of the Secretary of State that

24 each ground determined by the Office of the Secretary of State does not exist within sixty

25 days after service of the notice is perfected ~~under § 47-1A-1510~~, the Office of the

26 Secretary of State may revoke the foreign corporation's certificate of authority by signing

27 a certificate of revocation that recites the ground or grounds for revocation and its

28 effective date. The Office of the Secretary of State shall file the original of the certificate

29 and serve a copy on the foreign corporation ~~under § 47-1A-1510~~.

30 The authority of a foreign corporation to transact business in this state ceases on the

31 date shown on the certificate revoking its certificate of authority.

32 **Section 110.** That § 47-1A-1532 be AMENDED:

47-1A-1532. Appeal from revocation.

A foreign corporation may appeal the Office of the Secretary of State's revocation of its certificate of authority to the circuit court within thirty days after service of the certificate of revocation is perfected ~~under § 47-1A-1510~~. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the Office of the Secretary of State's certificate of revocation.

The court may summarily order the Office of the Secretary of State to reinstate the certificate of authority or may take any other action the court considers appropriate.

The court's final decision may be appealed as in other civil proceedings.

Section 111. That § 47-1A-1601.1 be AMENDED:

47-1A-1601.1. Corporate records--Copies at principal office.

A corporation shall keep a copy of the following records at its principal office:

- (1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in § 47-1A-120.2 regarding facts on which a filed document is dependent;
- (2) Its bylaws or restated bylaws and all amendments to them currently in effect;
- (3) Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;
- (4) The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years;
- (5) All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under § 47-1A-1620;
- (6) A list of the names and business addresses of its current directors and officers; and
- (7) Its most recent annual report delivered to the Office of the Secretary of State ~~under §§ 47-1A-1621 to 47-1A-1621.3, inclusive.~~

Section 112. That § 47-10-24 be AMENDED:

47-10-24. Applicability of other laws.

The provisions of §§ 47-1A-101 ~~to through~~ 47-1A-863.3, ~~inclusive,~~ §§ 47-1A-1401 ~~to through~~ 47-1A-1440, ~~inclusive,~~ and §§ 47-1A-1601 ~~to 47-1A-1621.3, inclusive, through~~

1 47-1A-1620 shall apply to corporations incorporated under this chapter, insofar as they
2 may be applicable and not inconsistent with this chapter.

3 **Section 113.** That § 47-11A-1 be AMENDED:

4 **47-11A-1. Formation of corporation and limited liability company**
5 **authorized.**

6 One or more chiropractors may form professional service corporations for the
7 practice of chiropractic under the South Dakota Business Corporation Act, as amended,
8 providing that such corporations are organized and operated in accordance with the
9 provisions of this chapter. The articles of incorporation of such corporations shall contain
10 provisions complying with the requirements of ~~§§ 47-11A-1 to 47-11A-12, inclusive~~
11 §§ 47-11A-1.1 through 47-11A-7.

12 Chiropractors may form professional limited liability companies under the South
13 Dakota Limited Liability Company Act, as amended, providing that such limited liability
14 companies are organized and operated in accordance with the provisions of this chapter.
15 The articles of organization of such limited liability companies shall contain provisions
16 complying with the requirements of ~~§§ 47-11A-1 to 47-11A-12, inclusive~~ §§ 47-11A-1.1
17 through 47-11A-7.

18 **Section 114.** That § 47-13A-1 be AMENDED:

19 **47-13A-1. Professional corporations for practice of law authorized--Limited**
20 **liability company.**

21 One or more lawyers licensed pursuant to chapter 16-16 may form professional
22 service corporations for the practice of law under §§ 47-1A-101 ~~to through~~ 47-1A-863.3,
23 ~~inclusive, §§47-1A-1401 to through 47-1A-1440, inclusive, and §§ 47-1A-1601 to 47-1A-~~
24 ~~1621.3, inclusive through 47-1A-1620,~~ or may form limited liability companies under the
25 South Dakota Limited Liability Company Act, providing that such corporations and limited
26 liability companies are organized and operated in accordance with the provisions of this
27 chapter. In any corporation formed under this chapter, one or more persons may act as
28 the sole stockholders, directors or officers of such corporation. However, any limited
29 liability company formed under this chapter shall comply with the South Dakota Limited
30 Liability Act, as amended.

31 **Section 115.** That § 47-13B-6 be AMENDED:

47-13B-6. Disposition of shares held by person no longer qualified.

Provisions shall be made requiring any shareholder who ceases to be eligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any other qualified person ~~having the qualifications prescribed in § 47-13B-5.~~

Section 116. That § 47-18-16.4 be AMENDED:

**47-18-16.4. Notice of grounds for dissolution--Time limit for corrections--
Subsequent existence--Authority of agent.**

If the secretary of state determines that one or more grounds exist under § 47-18-16.3 for dissolving a cooperative, ~~he the secretary~~ shall serve the cooperative with written notice of ~~his that~~ determination ~~under § 47-15-22.~~ If the cooperative does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist within sixty days after service of the notice is perfected, the secretary of state shall administratively dissolve the cooperative by signing a certificate of dissolution that recites the ground or grounds for dissolution and its effective date. The secretary of state shall file the original of the certificate and serve a copy on the cooperative ~~under § 47-15-22.~~ A cooperative administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under this chapter. Administrative dissolution of a cooperative does not terminate the authority of its registered agent.

Section 117. That § 47-18-16.5 be AMENDED:

47-18-16.5. Application for reinstatement.

Any cooperative administratively dissolved under § 47-18-16.4 may apply to the secretary of state for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) Recite the name of the cooperative and the effective date of its administrative dissolution; and
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated.

If the secretary of state determines that the application contains the information required and that the information is correct, ~~he the secretary~~ shall cancel the certificate of dissolution and prepare an original and one copy of a certificate of reinstatement that recites ~~his that~~ determination and the effective date of reinstatement, file the original of

1 the certificate, and serve the copy on the cooperative ~~under § 47-15-22~~. When the
2 reinstatement is effective, it relates back to and takes effect as of the effective date of the
3 administrative dissolution and the cooperative resumes carrying on its business as if the
4 administrative dissolution had never occurred.

5 **Section 118.** That § 47-18-16.6 be AMENDED:

6 **47-18-16.6. Denial of reinstatement--Appeal--Court action.**

7 If the secretary of state denies a cooperative's application for reinstatement
8 following administrative dissolution, ~~he~~the secretary shall serve the corporation ~~under~~
9 ~~§ 47-15-22~~ with a written notice that explains the reason or reasons for denial. The
10 cooperative may appeal the denial of reinstatement to the circuit court wherein its
11 registered office is located within thirty days after service of the notice of denial is
12 perfected. The cooperative appeals by petitioning the court to set aside the dissolution
13 and attaching to the petition copies of the secretary of state's certificate of dissolution,
14 the cooperative's application for reinstatement, and the secretary of state's notice of
15 denial. The court may summarily order the secretary of state to reinstate the dissolved
16 cooperative or may take other action the court considers appropriate. The court's final
17 decision may be appealed as in any other civil proceedings.

18 **Section 119.** That § 47-24-13.2 be AMENDED:

19 **47-24-13.2. Notice of dissolution--Time limit for corrections--Continued**
20 **existence--Authority of registered agent.**

21 If the secretary of state determines that one or more grounds exist under § 47-
22 24-13.1 for dissolving a corporation, ~~he~~the secretary shall serve the corporation with
23 written notice of ~~his~~that determination ~~under § 47-22-48~~. If the corporation does not
24 correct each ground for dissolution or demonstrate to the reasonable satisfaction of the
25 secretary of state that each ground determined by the secretary of state does not exist
26 within sixty days after service of the notice is perfected ~~under § 47-22-48~~, the secretary
27 of state shall administratively dissolve the corporation by signing a certificate of dissolution
28 that recites the ground or grounds for dissolution and its effective date. The secretary of
29 state shall file the original of the certificate and serve a copy on the corporation ~~under~~
30 ~~§ 47-22-48~~. A corporation administratively dissolved continues its corporate existence but
31 may not carry on any business except that necessary to wind up and liquidate its business
32 and affairs under chapter 47-26 and notify claimants under §§ 47-26-4 and 47-26-34.

1 Administrative dissolution of a corporation does not terminate the authority of its
2 registered agent.

3 **Section 120.** That § 47-24-14.1 be AMENDED:

4 **47-24-14.1. Denial of reinstatement--Appeal--Court action.**

5 If the secretary of state denies a corporation's petition for reinstatement following
6 administrative dissolution, ~~he~~the secretary shall serve the corporation ~~under § 47-22-48~~
7 with a written notice that explains the reason or reasons for denial. The corporation may
8 appeal the denial of reinstatement to the circuit court of the county where the
9 corporation's registered office or principal office was located within thirty days after service
10 of the notice of denial is perfected. The corporation appeals by petitioning the court to set
11 aside the dissolution and attaching to the petition copies of the secretary of state's
12 certificate of dissolution, the corporation's application for reinstatement and the secretary
13 of state's notice of denial. The court may order the secretary of state to reinstate the
14 dissolved corporation or may take other action the court considers appropriate. The court's
15 final decision may be appealed in the same manner as in any other civil proceedings.

16 **Section 121.** That § 47-24-16 be AMENDED:

17 **47-24-16. Conforming petition for reinstatement filed--Certificate.**

18 If a petition for reinstatement is filed and complies with the law, upon payment of
19 the fee as provided under § 47-28-6, together with submission of ~~the reports required~~
20 ~~under § 47-24-9 any required report~~, the secretary of state shall endorse the word "filed"
21 on the original and the copy and the month, day, and year of filing. ~~He~~The secretary of
22 state shall file the original in ~~his office~~the Office of the Secretary of State and issue a
23 certificate of reinstatement of corporation to which ~~he~~the secretary shall affix the copy.

24 The certificate of reinstatement of corporation, together with the copy of the petition
25 for reinstatement, shall be returned to the applicants or their representatives.

26 **Section 122.** That § 48-7-1104 be AMENDED:

27 **48-7-1104. Effective date, extended effective date, and repeal.**

28 Except as set forth below, the effective date of this chapter is July 1, 1986, and
29 the Uniform Limited Partnership Act being ~~§§ 48-6-1 to 48-6-64, inclusive,~~ are hereby
30 repealed:

31 (1) The existing provisions for execution and filing of certificates of limited partnerships

- 1 and amendments thereunder and cancellations thereof continue in effect until July
2 1, 1987, the extended effective date, §§ 48-7-102 to 48-7-105, inclusive, 48-7-201
3 to 48-7-204, inclusive, and 48-7-206 are not effective until the extended effective
4 date;
- 5 (2) Section 48-7-402, specifying the conditions under which a general partner ceases
6 to be a member of a limited partnership, is not effective until the extended effective
7 date, and the applicable provisions of existing law continue to govern until the
8 extended effective date;
- 9 (3) Sections 48-7-501, 48-7-502, and 48-7-608 apply only to contributions and
10 distributions made after the effective date of this chapter;
- 11 (4) Section 48-7-704 applies only to assignments made after the effective date of this
12 chapter;
- 13 (5) Sections 48-7-901 to 48-7-908, inclusive, dealing with registration of foreign limited
14 partnerships, are not effective until the extended effective date;
- 15 (6) Unless agreed otherwise by the partners, the applicable provisions of existing law
16 governing allocation of profits and losses, rather than the provisions of § 48-7-503,
17 distributions to a withdrawing partner, rather than the provisions of § 48-7-604,
18 and distribution of assets upon the winding up of a limited partnership, rather than
19 the provisions of § 48-7-804, shall govern limited partnerships formed before the
20 effective date of this chapter;
- 21 (7) The repeal of any statutory provision by this chapter does not impair, or otherwise
22 affect, the organization or the continued existence of a limited partnership existing
23 at the effective date of this chapter, nor does the repeal of any existing statutory
24 provision by this chapter impair any contract or affect any right accrued before the
25 effective date of this chapter.

26 **Section 123.** That § 49-28-36.7 be AMENDED:

27 **49-28-36.7. Application for permit.**

28 A motor carrier shall make an application for a single trip permit ~~as provided by~~
29 ~~§ 49-28-36.6,~~ and the permit secured at a port of entry or by such other means designated
30 by the department prior to beginning movement over the state's highways. The application
31 shall include the applicant's name and business address, a description of the vehicle, and
32 the route of travel suggested for the trip.

33 **Section 124.** That § 49-30-23 be AMENDED:

1 **49-30-23. Transfer of stock--Stock deemed personal property.**

2 The stock of every corporation organized under this chapter shall be deemed
3 personal estate, and shall be transferable in the manner prescribed in its bylaws, subject
4 to the provisions of §§ 57A-8-301 ~~to 57A-8-320.1, inclusive, through 57A-8-307~~ and
5 §§ 57A-8-401 ~~to through 57A-8-406, inclusive~~, but no share shall be transferable until all
6 previous calls shall have been fully paid in.

7 **Section 125.** That § 49-31-108 be AMENDED:

8 **49-31-108. Violators subject to civil penalty imposed by commission.**

9 Any person who violates §§ 49-31-99 ~~to 49-31-108, inclusive through 49-31-107,~~
10 or any rules promulgated pursuant to §§ 49-31-99 ~~to 49-31-108, inclusive through 49-~~
11 ~~31-107,~~ is subject to a civil penalty to be imposed by the commission, after notice and
12 opportunity for hearing. The commission may impose a civil fine of not more than five
13 thousand dollars for each offense. In determining the amount of the penalty upon finding
14 a violation, or the amount of a compromise settlement, the commission shall consider the
15 appropriateness of the penalty to the size of the business of the person charged, prior
16 offenses and compliance history, and the good faith of the person charged in attempting
17 to achieve compliance. Any telephone solicitation made to a person whose name first
18 appears on the register is not a violation of §§ 49-31-99 ~~to 49-31-108, inclusive through~~
19 ~~49-31-107,~~ if the solicitation is made within thirty days of the receipt of the register. Any
20 penalty collected pursuant to this section shall be credited to the telephone solicitation
21 account established pursuant to § 49-31-104.

22 **Section 126.** That § 49-33-5.1 be AMENDED:

23 **49-33-5.1. Powers of corporation--Business corporation powers.**

24 In addition to all provisions and powers in chapters 49-33 and 49-34 which are
25 applicable to corporations organized thereunder, all provisions and powers set forth in the
26 South Dakota Business Corporation Act, §§ 47-1A-101 ~~to through 47-1A-863.3, inclusive,~~
27 §§ 47-1A-1401 ~~to through 47-1A-1440, inclusive,~~ and §§ 47-1A-1601 ~~to 47-1A-1621.3,~~
28 ~~inclusive through 47-1A-1620,~~ applicable to domestic corporations are also applicable to
29 corporations which have been or will be organized under chapters 49-33 and 49-34 except
30 if in conflict with the express provisions of chapters 49-33 and 49-34.

31 **Section 127.** That § 49-33-21 be AMENDED:

1 **49-33-21. Transfer of stock--Stock deemed personal property.**

2 The stock of every corporation organized under this chapter shall be deemed
3 personal property and shall be transferable in the manner prescribed by its bylaws, and
4 subject to the provisions of §§ 57A-8-301 ~~to 57A-8-320.1, inclusive~~ through 57A-8-307
5 and 57A-8-401 ~~to through 57A-8-406, inclusive~~, but no shares ~~shall~~ may be transferable
6 until all previous calls and assessments thereon ~~shall~~ have been fully paid.

7 **Section 128.** That § 49-37-4 be AMENDED:

8 **49-37-4. Contractual powers--Sale of electrical appliances or equipment**
9 **prohibited.**

10 Subject to the limitations of the petition for its creation and all amendments
11 thereto, a consumers power district may engage in, or transact business, or enter into
12 any kind of contract or arrangement with any person, firm, corporation, limited liability
13 company, association or labor union, state, county, municipality, governmental
14 subdivision, or agency, or with the government of the United States, the Rural
15 Electrification Administration, or with any officer, department, bureau, or agency thereof,
16 or with any corporation organized by federal law, including the Reconstruction Finance
17 Corporation, or any successor thereof, or with any body, politic or corporate, for any of
18 the purposes mentioned in ~~§§ 49-37-2 and 49-37-3~~ § 49-37-2 or for or incident to the
19 exercise of any one or more of the foregoing powers, or for the generation, distribution,
20 transmission, sale, purchase, exchange, interchange, wheeling, and pooling of electric
21 power and energy for lighting, power, heating, and for any and every service involving,
22 employing, or in any manner pertaining to the use of electric power and energy, by
23 whatever means generated or distributed, or for the financing or payment of the cost and
24 expense incident to the acquisition or operation of any such power plant or system or
25 incident to any obligation or indebtedness entered into or incurred by the district, except
26 that such district may not engage in the sale of electrical appliances or equipment.

27 **Section 129.** That § 49-37-9.1 be AMENDED:

28 **49-37-9.1. Prior joint contracts, expenditures and acquisitions validated**
29 **despite noncompliance with competitive bid provisions.**

30 All acts and proceedings had prior to January 1, 1975, and all contracts,
31 expenditures and acquisitions made prior to January 1, 1975, by any consumers power
32 district of the state where such consumers power district jointly with others contracted for
33 the construction, building, alteration, extension, improvements, or the leasing of any

power plant or system are in all things legalized, cured, and declared valid, notwithstanding the fact that the consumers power district did not comply with the provisions of §§ 5-18-1 to 5-18-14, inclusive.

Section 130. That § 50-10-9 be AMENDED:

50-10-9. Regulations to be reasonable--Preexisting nonconforming structures.

No airport zoning regulation adopted under this chapter may be unreasonable. No regulation may require the removal, lowering, or other change or alteration of any structure or tree not conforming to the regulation when adopted or amended, or otherwise interfere with the continuance of any nonconforming use, except as provided in ~~§ 50-10-28~~ § 11-14-16.

Section 131. That § 51A-4-25 be AMENDED:

51A-4-25. Bank investments--Restrictions set by rule--Limitations.

A bank may purchase for its own account investment securities and registered mutual funds that invest exclusively in securities of the United States or its agencies and annuities as defined in § 51A-4-25.1 under such limits and restrictions as the commission may prescribe by rule, promulgated pursuant to chapter 1-26. In no event may the total amount of the investment securities of any one obligor or maker held by the bank for its own account exceed twenty percent of the capital stock and surplus and ten percent of the undivided profits of such bank except as provided in §§ 51A-4-26 and ~~51A-4-31 to 51A-4-41~~, inclusive § 51A-4-41.

Section 132. That § 51A-5-9 be AMENDED:

51A-5-9. Filing with Office of the Secretary of State by foreign bank or trust company acting as fiduciary--Designation as agent to receive process--Service of process.

Before qualifying or serving in this state in any fiduciary capacity, as defined in § 51A-5-8, the bank or trust company shall file in the Office of the Secretary of State of South Dakota, a copy of its charter certified by its secretary under its corporate seal, and a power of attorney designating the secretary of state or the secretary of state's successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter

1 within this state in respect of which the bank or trust company is acting in any fiduciary
2 capacity with like effect as personal service on the bank or trust company. The power of
3 attorney is irrevocable so long as any liability remains outstanding against the bank or
4 trust company in this state. Service of process under this section may be made in the
5 manner provided in ~~§ 47-1A-1510~~ chapter 59-11.

6 **Section 133.** That § 51A-7-13 be AMENDED:

7 **51A-7-13. Definitions.**

8 Terms used in ~~§§ 51A-7-13 to 51A-7-27, inclusive,~~ this chapter mean:

- 9 (1) "Acquisition of a branch," the acquisition of a branch located in a host state;
10 (2) "Bank," a bank as defined in 12 U.S.C. § 1813(h) as of January 1, 1996. The term
11 does not include any foreign bank as defined in § 12 U.S.C. 3101(7) as of January
12 1, 1996. However, the term includes any foreign bank organized under the laws of
13 a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin
14 Islands, the deposits of which are insured by the Federal Deposit Insurance
15 Corporation;
16 (3) "Bank supervisory agency," any agency of another state with primary responsibility
17 for chartering and supervising banks, the Office of the Comptroller of the Currency,
18 the Federal Deposit Insurance Corporation, the Board of Governors of the Federal
19 Reserve System, or any successor to these agencies;
20 (4) "Branch," a branch bank as defined by subdivision 51A-1-2(7);
21 (5) "Director," the director of the Division of Banking;
22 (6) "Control," control as construed consistently with the provisions of 12 U.S.C.
23 § 1841(a)(2) as of January 1, 1996;
24 (7) "Home state," for a state bank, the state by which the bank is chartered; for a
25 national bank, the state in which the main office of the bank is located; and for a
26 foreign bank, the state determined to be the home state of the foreign bank
27 pursuant to 12 U.S.C. § 3103(c) as of January 1, 1996;
28 (8) "Home state regulator," for an out-of-state state bank, the bank supervisory agency
29 of the state in which the bank is chartered;
30 (9) "Host state," a state, other than the home state of a bank, in which the bank
31 maintains, or seeks to establish and maintain a branch;
32 (10) "Out-of-state bank," a bank whose home state is a state other than South Dakota;
33 (11) "Out-of-state state bank," a bank chartered under the laws of any state other than
34 South Dakota;

(12) "State," any state of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands;

(13) "South Dakota state bank," a bank chartered under the laws of South Dakota;

(14) "Commission," the State Banking Commission for South Dakota.

Section 134. That § 51A-7-19 be AMENDED:

51A-7-19. Examination of out-of-state bank's South Dakota branch.

The director may make such examinations of any branch established and maintained in South Dakota pursuant to §§ 51A-7-13 to ~~51A-7-27, inclusive,~~ through 51A-7-26 by an out-of-state state bank as the director may deem necessary to determine whether the branch is operated in compliance with the laws of South Dakota and in accordance with safe and sound banking practices. The provisions of § 51A-2-18 apply to the examinations.

Section 135. That § 51A-7-23 be AMENDED:

51A-7-23. Joint examinations of joint enforcement actions by commission and bank supervisory agencies.

The commission may enter into joint examinations of joint enforcement actions with other bank supervisory agencies having concurrent jurisdiction over any branch established and maintained in South Dakota by an out-of-state bank or any branch established and maintained by a South Dakota state bank in any host state. The director may at any time take any actions independently if the director deems such actions to be necessary or appropriate to carry out the commission's responsibilities under §§ 51A-7-13 to ~~51A-7-27, inclusive,~~ through 51A-7-26 or to ensure compliance with the laws of South Dakota. However, in the case of an out-of-state state bank, the director shall recognize the exclusive authority of the home state regulator with respect to matters of safety and soundness.

Section 136. That § 51A-7-26 be AMENDED:

51A-7-26. Promulgation of rules to establish fees.

The commission may promulgate rules pursuant to chapter 1-26 to establish the fees provided by §§ 51A-7-13 to ~~51A-7-27, inclusive~~ through 51A-7-25, and to provide the necessary forms to administer §§ 51A-7-13 to ~~51A-7-27, inclusive~~ through 51A-7-25.

Section 137. That § 51A-12-13 be AMENDED:

51A-12-13. Collection of certain credit service charges by bank.

Notwithstanding any other provisions of law, a bank may contract for and collect the following credit service charges in connection with the extensions of credit made pursuant to § 51A-12-12 in an amount agreed to by the bank and the debtor either initially or pursuant to ~~a any modification made under § 54-11-10:~~

- (1) Membership fees, whether assessed on an annual or other periodic basis;
- (2) Transaction fees;
- (3) Interest charges permitted by § 54-3-1.1;
- (4) Charges for exceeding a designated credit limit;
- (5) Charges for stopping payment;
- (6) Charges for each return of a dishonored check, negotiable order of withdrawal or draft;
- (7) Other charges made in connection with the revolving loan or charge account arrangement.

All of the fees and charges permitted by this section shall be deemed interest. No fee, expense or other charge whatsoever may be taken or received by a bank under a revolving loan or charge account arrangement except as provided in this section.

Section 138. That § 55-13-3 be AMENDED:

55-13-3. Income--Principal--Charges.

- (a) Income is the return in money or property derived from the use of principal, including return received as
 - (1) rent of real or personal property, including sums received for cancellation or renewal of a lease;
 - (2) interest on money lent, including sums received as consideration for the privilege of prepayment of principal except as provided in § 55-13-7 on bond premium and bond discount;
 - (3) income earned during administration of a decedent's estate as provided in § 55-13-5;
 - (4) corporate distributions as provided in § 55-13-6;
 - (5) accrued increment on bonds or other obligations issued at discount as provided in § 55-13-7;
 - (6) receipts from business and farming operations as provided in § 55-13-8;

- 1 (7) receipts from disposition of natural resources as provided in §§ 55-13-9 and
2 55-13-10;
- 3 (8) receipts from other principal subject to depletion as provided in § 55-13-11;
- 4 (9) receipts from disposition of any underproductive property ~~as provided in~~
5 ~~§ 55-13-12.~~
- 6 (b) Principal is the property which has been set aside by the owner or the person legally
7 empowered so that it is held in trust eventually to be delivered to a remainderman
8 while the return or use of the principal is in the meantime taken or received by or
9 held for accumulation for an income beneficiary. Principal includes
- 10 (1) consideration received by the trustee on the sale or other transfer of principal
11 or on repayment of a loan or as a refund or replacement or change in the
12 form of principal;
- 13 (2) proceeds of property taken on eminent domain proceedings;
- 14 (3) proceeds of insurance upon property forming part of the principal except
15 proceeds of insurance upon a separate interest of an income beneficiary;
- 16 (4) stock dividends, receipts on liquidation of a corporation, and other corporate
17 distributions as provided in § 55-13-6;
- 18 (5) receipts from the disposition of corporate securities as provided in § 55-13-
19 7;
- 20 (6) royalties and other receipts from disposition of natural resources as provided
21 in §§ 55-13-9 and 55-13-10;
- 22 (7) receipts from other principal subject to depletion as provided in § 55-13-11;
- 23 (8) any profit resulting from any change in the form of principal ~~except as~~
24 ~~provided in § 55-13-12 on underproductive property;~~
- 25 (9) receipts from disposition of any underproductive property ~~as provided in~~
26 ~~§ 55-13-12;~~
- 27 (10) any allowances for depreciation established under §§ 55-13-8 and 55-13-
28 13(a)(2).
- 29 (c) After determining income and principal in accordance with the terms of the trust
30 instrument or of this chapter, the trustee shall charge to income or principal
31 expenses and other charges as provided in § 55-13-13.

32 **Section 139.** That § 56-2-14 be AMENDED:

56-2-14. Satisfaction of principal obligation by surety--Reimbursement, exception as to other persons.

If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed including necessary costs and expenses, but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, ~~except as prescribed by § 56-2-15.~~

Section 140. That § 57A-2-512 be AMENDED:

57A-2-512. Payment by buyer before inspection.

(1) Where the contract requires payment before inspection nonconformity of the goods does not excuse the buyer from so making payment unless:

- (a) The nonconformity appears without inspection; or
- (b) Despite tender of the required documents the circumstances would justify injunction against honor under this title ~~(§ 57A-5-109(b)).~~

(2) Payment pursuant to subsection (1) does not constitute an acceptance of goods or impair the buyer's right to inspect or any of his remedies.

Section 141. That § 57A-5-108 be AMENDED:

57A-5-108. Issuer's rights and obligations.

~~(a) Except as otherwise provided in § 57A-5-109, an~~ An issuer shall honor a presentation that, as determined by the standard practice referred to in subsection (e), appears on its face strictly to comply with the terms and conditions of the letter of credit. Except as otherwise provided in § 57A-5-113 and unless otherwise agreed with the applicant, an issuer shall dishonor a presentation that does not appear so to comply.

(b) An issuer has a reasonable time after presentation, but not beyond the end of the seventh business day of the issuer after the day of its receipt of documents:

- (1) To honor;
- (2) If the letter of credit provides for honor to be completed more than seven business days after presentation, to accept a draft or incur a deferred obligation; or
- (3) To give notice to the presenter of discrepancies in the presentation.

(c) Except as otherwise provided in subsection (d), an issuer is precluded from asserting as a basis for dishonor any discrepancy if timely notice is not given, or any discrepancy not stated in the notice if timely notice is given.

(d) Failure to give the notice specified in subsection (b) or to mention fraud, forgery, or expiration in the notice does not preclude the issuer from asserting as a basis for dishonor fraud or forgery ~~as described in § 57A-5-109(a)~~ or expiration of the letter of credit before presentation.

(e) An issuer shall observe standard practice of financial institutions that regularly issue letters of credit. Determination of the issuer's observance of the standard practice is a matter of interpretation for the court. The court shall offer the parties a reasonable opportunity to present evidence of the standard practice.

(f) An issuer is not responsible for:

- (1) The performance or nonperformance of the underlying contract, arrangement, or transaction;
- (2) An act or omission of others; or
- (3) Observance or knowledge of the usage of a particular trade other than the standard practice referred to in subsection (e).

(g) If an undertaking constituting a letter of credit under § 57A-5-102(a)(10) contains nondocumentary conditions, an issuer shall disregard the nondocumentary conditions and treat them as if they were not stated.

(h) An issuer that has dishonored a presentation shall return the documents or hold them at the disposal of, and send advice to that effect to, the presenter.

(i) An issuer that has honored a presentation as permitted or required by this chapter:

- (1) Is entitled to be reimbursed by the applicant in immediately available funds not later than the date of its payment of funds;
- (2) Takes the documents free of claims of the beneficiary or presenter;
- (3) Is precluded from asserting a right of recourse on a draft under §§ 57A-3-414 and 57A-3-415;
- (4) Except as otherwise provided in §§ 57A-5-110 and 57A-5-117, is precluded from restitution of money paid or other value given by mistake to the extent the mistake concerns discrepancies in the documents or tender which are apparent on the face of the presentation; and
- (5) Is discharged to the extent of its performance under the letter of credit unless the issuer honored a presentation in which a required signature of a beneficiary was forged.

Section 142. That § 57A-5-110 be AMENDED:

1 **57A-5-110. Warranties.**

2 (a) If its presentation is honored, the beneficiary warrants:

- 3 (1) To the issuer, any other person to whom presentation is made, and the applicant
4 that there is no fraud or forgery ~~of the kind described in § 57A-5-109(a);~~ and
5 (2) To the applicant that the drawing does not violate any agreement between the
6 applicant and beneficiary or any other agreement intended by them to be
7 augmented by the letter of credit.

8 (b) The warranties in subsection (a) are in addition to warranties arising under
9 chapters 57A-3, 57A-4, 57A-7, and 57A-8 because of the presentation or transfer of
10 documents covered by any of those chapters.

11 **Section 143.** That § 57A-5-113 be AMENDED:

12 **57A-5-113. Transfer by operation of law.**

13 (a) A successor of a beneficiary may consent to amendments, sign and present
14 documents, and receive payment or other items of value in the name of the beneficiary
15 without disclosing its status as a successor.

16 (b) A successor of a beneficiary may consent to amendments, sign and present
17 documents, and receive payment or other items of value in its own name as the disclosed
18 successor of the beneficiary. Except as otherwise provided in subsection (e), an issuer
19 shall recognize a disclosed successor of a beneficiary as beneficiary in full substitution for
20 its predecessor upon compliance with the requirements for recognition by the issuer of a
21 transfer of drawing rights by operation of law under the standard practice referred to in
22 § 57A-5-108(e) or, in the absence of such a practice, compliance with other reasonable
23 procedures sufficient to protect the issuer.

24 (c) An issuer is not obliged to determine whether a purported successor is a successor
25 of a beneficiary or whether the signature of a purported successor is genuine or
26 authorized.

27 (d) Honor of a purported successor's apparently complying presentation under
28 subsection (a) or (b) has the consequences specified in § 57A-5-108(i) even if the
29 purported successor is not the successor of a beneficiary. Documents signed in the name
30 of the beneficiary or of a disclosed successor by a person who is neither the beneficiary
31 nor the successor of the beneficiary are forged documents ~~for the purposes of § 57A-5-~~
32 109.

(e) An issuer whose rights of reimbursement are not covered by subsection (d) or substantially similar law and any confirmer or nominated person may decline to recognize a presentation under subsection (b).

(f) A beneficiary whose name is changed after the issuance of a letter of credit has the same rights and obligations as a successor of a beneficiary under this section.

Section 144. That § 57A-7-504 be AMENDED:

57A-7-504. Rights acquired in absence of due negotiation--Effect of diversion--Stoppage of delivery.

(a) A transferee of a document of title, whether negotiable or nonnegotiable, to which the document has been delivered but not duly negotiated, acquires the title and rights that its transferor had or had actual authority to convey.

(b) In the case of a nonnegotiable document of title, until but not after the bailee receives notice of the transfer, the rights of the transferee may be defeated:

- (1) By those creditors of the transferor that could treat the transfer as void under § 57A-2-402 or ~~57-2A-308~~ 57A-2A-308;
- (2) By a buyer from the transferor in ordinary course of business if the bailee has delivered the goods to the buyer or received notification of the buyer's rights;
- (3) By a lessee from the transferor in ordinary course of business if the bailee has delivered the goods to the lessee or received notification of the lessee's rights; or
- (4) As against the bailee, by good faith dealings of the bailee with the transferor.

(c) A diversion or other change of shipping instructions by the consignor in a nonnegotiable bill of lading which causes the bailee not to deliver the goods to the consignee defeats the consignee's title to the goods if the goods have been delivered to a buyer in ordinary course of business or a lessee in ordinary course of business and in any event defeats the consignee's rights against the bailee.

(d) Delivery of the goods pursuant to a nonnegotiable document of title may be stopped by a seller under § 57A-2-705 or a lessor under § 57A-2A-526, subject to the requirements of due notification in those sections. A bailee honoring the seller's or lessor's instructions is entitled to be indemnified by the seller or lessor against any resulting loss or expense.

Section 145. That § 57A-9-501.1 be AMENDED:

57A-9-501.1. Validation of noncomplying statements.

All statements to continue, release, assign, amend or terminate any financing statements filed subsequent to December 31, 1979, and prior to July 1, 1980, notwithstanding any noncompliance with ~~§ 57A-9-401.1 as amended~~ the law regarding filing prior to July 1, 1980, are hereby cured, legalized and validated ~~as fully as if such filings had been made in full compliance with § 57A-9-401.1.~~

Section 146. That § 57A-10-101 be AMENDED:

57A-10-101. Effective date.

Such parts of this title as are necessary to effectuate the enactment of the Uniform Stock Transfer Act, including but not limited to subsection (1) of § 57A-1-102, § 57A-1-103, subsections (19), (28), (30), (32), (33) and (44) of § 57A-1-201, §§ 57A-8-103, 57A-8-204, 57A-8-206, 57A-8-207, 57A-8-301, 57A-8-306, 57A-8-307, ~~57A-8-308, 57A-8-309, 57A-8-313, 57A-8-315, 57A-8-317 and 57A-8-405~~, became effective July 1, 1966, and this title otherwise became effective July 1, 1967. It applies to transactions entered into and events occurring after that date.

Section 147. That § 58-2-39 be AMENDED:

58-2-39. Promulgation of rules regarding definitions, enrollment, disclosure, notice, claims, and records.

The Division of Insurance may promulgate rules pursuant to chapter 1-26 in the following areas:

- (1) Definition of terms used in §§ 58-17-30.2, 58-17-30.4, 58-18-32, 58-18-34, and 58-33-85 to through 58-33-88, inclusive, 58-38-11.7, 58-38-11.9, 58-40-10.7, 58-40-10.9, 58-41-35.2, and 58-41-35.4;
- (2) Insurer enrollment procedures;
- (3) Disclosure and notice requirements;
- (4) Claim processing procedures; and
- (5) Record-keeping requirements for insurers and producers.

Section 148. That § 58-5-155 be AMENDED:

58-5-155. Qualified education loan insurer subject to Title 58--Exceptions.

Any qualified education loan insurer is subject to the provisions of Title 58 except as otherwise specifically provided in §§ 58-5-154 to 58-5-160, inclusive. Notwithstanding

any other provision of Title 58, a qualified education loan insurer is not subject to the following provisions of Title 58 and any rules promulgated to implement any such provisions:

- (1) Sections 58-4-48, and 58-5-85, ~~and 58-27-63~~;
- (2) Subdivision 58-5-7(5) to the extent that this subdivision permits only one class of authorized voting common stock or otherwise restricts the authorization of preferred stock, with or without voting rights; and
- (3) ~~Section 58-5-92 to the extent that this section prohibits agreements with respect to investments permitted under § 58-5-157; and~~
- (4) Chapter 58-5A.

Section 149. That § 58-6A-14 be AMENDED:

58-6A-14. Countersignature on policy not required.

A policy of insurance issued to a risk retention group or any member of that group is not required to be countersigned ~~as provided in § 58-6-62.~~

Section 150. That § 58-7-33 be AMENDED:

58-7-33. Duration of deposit of assets and securities.

Every deposit made in this state by an insurer pursuant to this title, including assets and securities held in another state under custodial arrangements ~~permitted by § 58-7-19~~, shall be held as long as there is outstanding any liability of the insurer as to which the deposit was so required; or if a deposit required under the retaliatory law, §§ 58-6-70 to 58-6-73, inclusive, the deposit shall be held for so long as the basis of such retaliation exists.

Section 151. That § 58-12-22 be AMENDED:

58-12-22. Transmission of information from insurer's database to Department of Social Services--Data match against medicaid eligible recipients or recipients of support services--Disclosure--Liability.

Within sixty days of a request from the Department of Social Services, the department and an insurer shall negotiate an acceptable format for the transmission of information from the insurer's database of policy holders, sponsors, subscribers, covered individuals in South Dakota, and coverage dates. The format shall include the data elements, medium, frequency of reporting, any costs of the insurer to be reimbursed, and

procedures that will be followed when a data match is found. The Department of Social Services shall match the name, address, date of birth, and social security number if available, of the insured's policyholders, sponsors, subscribers, and covered individuals against the medicaid eligible recipients and recipients of support enforcement services as defined in subdivision 25-7A-1(19).

Upon discovery of a match, the department may incorporate the following information into its recipient database:

- (1) The name, address, date of birth, social security number if available, and the unique health care identification number of the covered individual;
- (2) The name, address, date of birth, social security number if available, policy number, and group identification number of the policyholder, sponsor, or subscriber;
- (3) The name and address of the employer if it is an employer-employee benefit plan;
- (4) Types of covered services under the plan or policy;
- (5) Coverage effective date and termination of coverage date for each covered individual; and
- (6) The name and address of the claim administrator for the policy or plan.

The department may not use or disclose any information provided by the insurer other than as permitted or required by law. The insurer may not be held liable for the release of insurance coverage information to the department or the director by any party when done so under the authority of §§ 58-12-22 to ~~58-12-29, inclusive~~ through 58-12-28.

Section 152. That § 58-12-26 be AMENDED:

58-12-26. Insurer defined.

For the purposes of §§ 58-12-22 to ~~58-12-29, inclusive~~ through 58-12-28, the term, insurer, means:

- (1) Any commercial insurance company, employer-employee benefit plan, health maintenance organization, professional association, service benefit plan, public self-funded employer or pool, union, or fraternal group selling or otherwise offering individual or group health insurance coverage including self-insured and self-funded plans;
- (2) Any profit or nonprofit prepaid plan offering either medical services of full or partial payment for services included in the department's medicaid plan;
- (3) Any other entity offering health benefits for which a medicaid recipient may be eligible in addition to public medical assistance;
- (4) Any managed care organization, third-party administrator, pharmacy benefits

- 1 manager, or other entity which processes claims, administers services, or otherwise
2 manages health benefits on behalf of any of the aforementioned insurers; or
3 (5) Any other party that is by statute, contract, or agreement, legally responsible for
4 payment of a claim for a health care item or service including workers'
5 compensation, automobile insurance, and liability insurance plans.

6 **Section 153.** That § 58-12-27 be AMENDED:

7 **58-12-27. Department defined.**

8 For the purposes of §§ 58-12-22 to ~~58-12-29, inclusive~~ through 58-12-28, the
9 term, department, means the Department of Social Services, or an entity under contract
10 with the Department of Social Services to carry out the functions of §§ 58-12-22 to ~~58-~~
11 ~~12-29, inclusive~~ through 58-12-28.

12 **Section 154.** That § 58-15-30 be AMENDED:

13 **58-15-30. Nonforfeiture benefits in policies issued prior to the adoption of**
14 **standard nonforfeiture law.**

15 This section shall apply only to policies of life insurance issued prior to the operative
16 date specified in § 58-15-42.

17 The nonforfeiture benefit referred to in § 58-15-21 shall be available to the owner of
18 the policy in event of default in premium payments, after premiums shall have been paid
19 for three years, and shall be a stipulated form of insurance, the net value of which shall
20 be at least equal to the reserve at the date of default on the policy and on any dividend
21 additions thereto, computed according to a mortality table, interest rate, and method of
22 valuation ~~permitted by §§ 58-26-17 to 58-26-20, inclusive~~, less a sum not more than two
23 and one-half percent of the amount insured by the policy and of any existing dividend
24 additions thereto, and less any existing indebtedness to insurer on the policy. The policy
25 shall stipulate that it may be surrendered to the insurer at its home office within one
26 month from date of default for a specified cash value at least equal to the sum which
27 would otherwise be available for the purchase of insurance as aforesaid and may stipulate
28 that the insurer may defer payment for not more than six months after the application
29 therefor is made. Provided, however, that if the benefits under the policy are calculated
30 according to the commissioner's 1958 standard ordinary mortality table, the value of any
31 extended term insurance, with accompanying pure endowment, if any, may be calculated
32 according to rates of mortality not exceeding those shown in the commissioner's 1958
33 extended term insurance table, and that if the benefits under the policy are calculated

1 according to any other more modern table than the American experience table of
2 mortality, the value of any extended term insurance, with accompanying pure endowment,
3 if any, may be calculated according to rates of mortality not exceeding one hundred thirty
4 percent of the rates according to such more modern table. The policy shall contain a table
5 showing in figures the options available each year upon default in premium payments
6 during at least the first twenty years of the policy, or during the term of the policy,
7 whichever is the shorter. This section shall not apply to term insurance of twenty years or
8 less or to industrial life insurance policies.

9 **Section 155.** That § 58-16-54 be AMENDED:

10 **58-16-54. Responsibilities of prior carrier and succeeding carrier upon**
11 **discontinuance.**

12 The following provisions dictate the responsibility of the prior carrier and
13 succeeding carrier when coverage is discontinued:

- 14 (1) After discontinuance of the policy, contract, or certificate, the prior carrier remains
15 liable only to the extent of its accrued liabilities and extensions of benefits. The
16 position of the prior carrier shall be the same whether the group policyholder or
17 other entity secures replacement coverage from a new carrier, self-insures, or
18 foregoes the provision of coverage;
- 19 (2) If the individual was validly covered under the prior plan on the date of
20 discontinuance, each individual who is eligible for coverage in accordance with the
21 succeeding carrier's plan of benefits is, with respect to the class or classes of
22 individuals, eligible and shall be covered under the succeeding carrier's plan if (a)
23 any actively-at-work and nonconfinement rules are met, and (b) if required by the
24 succeeding carrier, the individual requests enrollment;
- 25 (3) Each person not covered under the succeeding carrier's plan of benefits in
26 accordance with subdivision (2) shall nevertheless be covered by the succeeding
27 carrier in accordance with the following rules if the individual was validly covered,
28 including benefit extension, under the prior plan on the date of discontinuance and
29 if the individual is a member of the class or classes of individuals eligible for
30 coverage under the succeeding carrier's plan. Any reference in the following
31 subdivisions to an individual who was or was not totally disabled is a reference to
32 the individual's status immediately prior to the date the succeeding carrier's
33 coverage becomes effective;
- 34 (4) The minimum level of benefits to be provided by the succeeding carrier shall be the

- 1 applicable level of benefits of the prior carrier's plan reduced by any benefits
2 payable by the prior plan;
- 3 (5) Coverage shall be provided by the succeeding carrier until the earliest of the
4 following dates:
- 5 (a) The date the individual becomes eligible under the succeeding carrier's plan
6 as described in subdivision (1);
- 7 (b) The date the individual's coverage would terminate in accordance with the
8 succeeding carrier's plan provisions applicable to individual termination of
9 coverage, such as at termination of employment or ceasing to be an eligible
10 dependent; or
- 11 (c) In the case of an individual who was totally disabled, and in the case of a
12 type of coverage for which § 58-16-53 requires an extension of benefits or
13 accrued liability, the end of any period of extension benefits or accrued
14 liability that is required of the prior carrier by ~~§ 53-16-53~~ § 58-16-53, or if
15 the prior carrier's policy, contract, or certificate is not subject to that section,
16 but would have been required of the prior carrier had the policy, contract, or
17 certificate been subject to § 58-16-53 at the time the prior carrier's plan was
18 discontinued and replaced by the succeeding carrier's plan;
- 19 (6) In any situation in which a determination of the prior carrier's benefit is required by
20 the succeeding carrier, at the succeeding carrier's request the prior carrier shall
21 furnish a statement of the benefits available or pertinent information, sufficient to
22 permit verification of the benefit determination or the determination itself by the
23 succeeding carrier. For the purposes of this subdivision, benefits of the prior plan
24 shall be determined in accordance with all of the definitions, conditions, and covered
25 expense provisions of the prior plan rather than those of the succeeding plan. The
26 benefit determination shall be made as if coverage had not been replaced by the
27 succeeding carrier;
- 28 (7) A succeeding carrier's policy may contain a provision limiting benefits to employees
29 who are actively at work. However, any individual who remains as an employee,
30 was covered by the prior carrier, and was disabled as of the date the succeeding
31 carrier coverage became effective for that employer, will continue to be covered by
32 the prior carrier as long as the individual remains an employee. An individual who
33 is not disabled and is not at work on the date the succeeding carrier's coverage
34 commences is considered actively at work as long as the absence from work is an
35 employer-approved absence.

1 **Section 156.** That § 58-17-87 be AMENDED:

2 **58-17-87. Director to promulgate rules for individual health insurance--**

3 **Scope of rules.**

4 The director shall promulgate rules pursuant to chapter 1-26 to cover:

- 5 (1) Terms or renewability;
- 6 (2) Conditions of eligibility;
- 7 (3) Benefit limitations, exceptions, and reductions;
- 8 (4) Definition of terms;
- 9 (5) Filing requirements for forms, rates, and rate schedules;
- 10 (6) Marketing practices;
- 11 (7) Reporting practices;
- 12 (8) Compensation arrangements between insurers or other entities and their agents,
- 13 representatives, or producers;
- 14 (9) Suitability and appropriateness of the policy sold;
- 15 (10) Certificates of coverage;
- 16 (11) Determinations with regard to waiting periods;
- 17 (12) College plans;
- 18 (13) Creditable coverages;
- 19 (14) Breaks in coverage;
- 20 (15) The application of waiting periods; and
- 21 (16) Risk spreading mechanisms.

22 The director shall promulgate rules pursuant to chapter 1-26 that specify prohibited
23 policy or certificate provisions not otherwise specifically authorized by statute which, in
24 the opinion of the director, are unjust, unfair, or unfairly discriminatory to any person
25 insured or proposed for coverage under an individual policy or certificate. The director
26 shall also promulgate rules pursuant to chapter 1-26 assuring public access to rate and
27 form information and establishing procedures for rate and form approvals and
28 disapprovals. If any federal standards are in place which would require additional steps to
29 meet those standards beyond what is required by this chapter, the director shall
30 promulgate rules to require the offering of health insurance plans, ~~in addition to those~~
31 ~~specifically required by § 58-17-85,~~ the underwriting and coverage criteria that may be
32 utilized for such health insurance plans, and other requirements related to the coverage
33 criteria and availability of health insurance to individuals in this state in order to minimally
34 meet the federal standards.

Section 157. That § 58-18-52 be AMENDED:

58-18-52. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34, ~~§§ 47-15-2, 47-22-4, and 47-14-2~~ § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-18-52 to 58-18-62, inclusive, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law. Stop loss or excess insurance may be purchased in the same manner as group health insurance is purchased pursuant to §§ 58-18-52 to 58-18-62, inclusive.

Section 158. That § 58-28-30 be AMENDED:

58-28-30. General insurance law applicable--Exceptions.

Except for §§ 58-15-13, 58-15-14, 58-15-15, 58-15-17, 58-15-18, 58-15-19, 58-15-21, 58-15-22, 58-15-29, 58-15-31, 58-15-32, 58-15-33, 58-15-34, 58-15-35, 58-15-36, 58-15-38, 58-15-39, and 58-27-108, as in the case of a variable life insurance policy, §§ 58-15-57, 58-15-62, 58-15-64, 58-15-65, 58-15-66, ~~58-15-72 to 58-15-81, inclusive,~~ and 58-27-108, as in the case of a variable annuity contract and except as is otherwise provided in this chapter, all pertinent provisions of the insurance code apply to separate accounts and contracts relating thereto.

Section 159. That § 58-29B-104 be AMENDED:

58-29B-104. Circumstances under which claimant making late filing may share in distributions.

The liquidator may permit a claimant making a late filing to share in distributions, whether past or future, as if he were not late, to the extent that any such payment will not prejudice the orderly administration of the liquidation, under the following circumstances:

- (1) The existence of the claim was not known to the claimant and that he filed his claim as promptly thereafter as reasonably possible after learning of it;
- (2) A transfer to a creditor was avoided under §§ 58-29B-61 to 58-29B-83, inclusive, or was voluntarily surrendered under §§ 58-29B-84 and ~~59-29B-85~~ 58-29B-85, and that the filing satisfies the conditions of §§ 58-29B-84 and 58-29B-85;
- (3) The valuation under §§ 58-29B-121 and 58-29B-122, of security held by a secured

1 creditor shows a deficiency, which is filed within thirty days after the valuation.

2 **Section 160.** That § 58-29C-48 be AMENDED:

3 **58-29C-48. Definitions.**

4 Terms used in this chapter mean:

- 5 (1) "Account," either of the two accounts created under § 58-29C-49;
- 6 (2) "Association," the South Dakota Life and Health Insurance Guaranty Association
7 described in § 58-29C-49;
- 8 (3) "Authorized assessment" or the term "authorized" when used in the context of
9 assessments, means a resolution by the board of directors has been passed
10 whereby an assessment will be called immediately or in the future from member
11 insurers for a specified amount. An assessment is authorized when the resolution
12 is passed;
- 13 (4) "Benefit plan," a specific employee, union, or association of natural persons benefit
14 plan;
- 15 (5) "Called assessment" or the term "called" when used in the context of assessments,
16 means that a notice has been issued by the association to member insurers
17 requiring that an authorized assessment be paid within the time frame set forth
18 within the notice. An authorized assessment becomes a called assessment when
19 notice is mailed by the association to member insurers;
- 20 (6) "Contractual obligation," an obligation under a policy or contract or certificate under
21 a group policy or contract, or portion thereof for which coverage is provided under
22 § 58-29C-46;
- 23 (7) "Covered policy," a policy or contract or portion of a policy or contract for which
24 coverage is provided under § 58-29C-46;
- 25 (8) "Director," the director of the Division of Insurance of this state;
- 26 (9) "Extra-contractual claims," include, for example, claims relating to bad faith in the
27 payment of claims, punitive or exemplary damages, or attorneys' fees and costs;
- 28 (10) "Impaired insurer," a member insurer which, after July 1, 2003, is not an insolvent
29 insurer, and is placed under an order of rehabilitation or conservation by a court of
30 competent jurisdiction;
- 31 (11) "Insolvent insurer," a member insurer which after July 1, 2003, is placed under an
32 order of liquidation by a court of competent jurisdiction with a finding of insolvency;
- 33 (12) "Member insurer," an insurer licensed or that holds a certificate of authority to
34 transact in this state any kind of insurance for which coverage is provided under

- 1 § 58-29C-46, and includes an insurer whose license or certificate of authority in this
2 state may have been suspended, revoked, not renewed, or voluntarily withdrawn,
3 but does not include:
- 4 (a) A hospital or medical service organization, whether for profit or nonprofit;
 - 5 (b) A health maintenance organization;
 - 6 (c) A fraternal benefit society;
 - 7 (d) A mandatory state pooling plan;
 - 8 (e) A mutual assessment company or other person that operates on an
9 assessment basis;
 - 10 (f) An insurance exchange;
 - 11 (g) An organization engaged in the issuance of charitable gift annuities, which is
12 described in § 58-1-16; or
 - 13 (h) An entity similar to any of the above;
- 14 (13) "Moody's Corporate Bond Yield Average," the Monthly Average Corporates as
15 published by Moody's Investors Service, Inc., or any successor thereto;
- 16 (14) "Owner" of a policy or contract and "policy owner" and "contract owner," the person
17 who is identified as the legal owner under the terms of the policy or contract or who
18 is otherwise vested with legal title to the policy or contract through a valid
19 assignment completed in accordance with the terms of the policy or contract and
20 properly recorded as the owner on the books of the insurer. The terms owner,
21 contract owner, and policy owner do not include persons with a mere beneficial
22 interest in a policy or contract;
- 23 (15) "Person," an individual, corporation, limited liability company, partnership,
24 association, governmental body or entity, or voluntary organization;
- 25 (16) "Premiums," amounts or considerations (by whatever name called) received on
26 covered policies or contracts less returned premiums, considerations, and deposits
27 and less dividends and experience credits. The term, premiums, does not include
28 amounts or considerations received for policies or contracts or for the portions of
29 policies or contracts for which coverage is not provided under subpart B of § 58-
30 29C-46 except that assessable premium may not be reduced on account of
31 subsection ~~58-29C-46B(2)(c)~~ 58-29C-46(B)(2)(c) relating to interest limitations
32 and subdivision ~~58-29C-46C(2)~~ 58-29C-46(C)(2) relating to limitations with respect
33 to one individual, one participant, and one contract owner. Premiums do not
34 include:
- 35 (a) Premiums on an unallocated annuity contract; or

1 (b) With respect to multiple nongroup policies of life insurance owned by one
2 owner, whether the policy owner is an individual, firm, corporation, or other
3 person, and whether the persons insured are officers, managers, employees,
4 or other persons, premiums in excess of five million dollars with respect to
5 these policies or contracts, regardless of the number of policies or contracts
6 held by the owner;

7 (17) "Principal place of business" of a plan sponsor or a person other than a natural
8 person, the single state in which the natural persons who establish policy for the
9 direction, control, and coordination of the operations of the entity as a whole
10 primarily exercise that function, determined by the association in its reasonable
11 judgment by considering the following factors:

12 (a) The state in which the primary executive and administrative headquarters of
13 the entity is located;

14 (b) The state in which the principal office of the chief executive officer of the
15 entity is located;

16 (c) The state in which the board of directors (or similar governing person or
17 persons) of the entity conducts the majority of its meetings;

18 (d) The state in which the executive or management committee of the board of
19 directors (or similar governing person or persons) of the entity conducts the
20 majority of its meetings;

21 (e) The state from which the management of the overall operations of the entity
22 is directed; and

23 (f) In the case of a benefit plan sponsored by affiliated companies comprising a
24 consolidated corporation, the state in which the holding company or
25 controlling affiliate has its principal place of business as determined using the
26 above factors. However, in the case of a plan sponsor, if more than fifty
27 percent of the participants in the benefit plan are employed in a single state,
28 that state shall be deemed to be the principal place of business of the plan
29 sponsor.

30 The principal place of business of a plan sponsor of a benefit plan shall be deemed
31 to be the principal place of business of the association, committee, joint board of
32 trustees, or other similar group of representatives of the parties who establish or
33 maintain the benefit plan that, in lieu of a specific or clear designation of a principal
34 place of business, shall be deemed to be the principal place of business of the

- 1 employer or employee organization that has the largest investment in the benefit
2 plan in question;
- 3 (18) "Receivership court," the court in the insolvent or impaired insurer's state having
4 jurisdiction over the conservation, rehabilitation, or liquidation of the insurer;
- 5 (19) "Resident," a person to whom a contractual obligation is owed and who resides in
6 this state on the date of entry of a court order that determines a member insurer
7 to be an impaired insurer or a court order that determines a member insurer to be
8 an insolvent insurer. A person may be a resident of only one state, which in the
9 case of a person other than a natural person shall be its principal place of business.
10 Citizens of the United States that are either (i) residents of foreign countries, or (ii)
11 residents of United States possessions, territories, or protectorates that do not have
12 an association similar to the association created by this chapter, shall be deemed
13 residents of the state of domicile of the insurer that issued the policies or contracts;
- 14 (20) "Structured settlement annuity," an annuity purchased in order to fund periodic
15 payments for a plaintiff or other claimant in payment for or with respect to personal
16 injury suffered by the plaintiff or other claimant;
- 17 (21) "State," a state, the District of Columbia, Puerto Rico, and a United States
18 possession, territory, or protectorate;
- 19 (22) "Supplemental contact," a written agreement entered into for the distribution of
20 proceeds under a life, health, or annuity policy or contract;
- 21 (23) "Unallocated annuity contract," an annuity contract or group annuity certificate
22 which is not issued to and owned by an individual, except to the extent of any
23 annuity benefits guaranteed to an individual by an insurer under the contract or
24 certificate.

25 **Section 161.** That § 58-29C-49 be AMENDED:

26 **58-29C-49. Continuation of association--Membership--Function and**
27 **organization--Accounts--Supervision--Meetings.**

28 A. There is hereby continued the nonprofit legal entity known as the South Dakota
29 Life and Health Insurance Guaranty Association ~~as created by former § 58-29C-1~~. All
30 member insurers shall be and remain members of the association as a condition of their
31 authority to transact insurance in this state. The association shall perform its functions
32 under the plan of operation established and approved under § 58-29C-53 and shall
33 exercise its powers through a board of directors established under § 58-29C-50. For
34 purposes of administration and assessment, the association shall maintain two accounts:

- 1 (1) The life insurance and annuity account which includes the following subaccounts:
2 (a) Life insurance account; and
3 (b) Annuity account; and
4 (2) The health insurance account.

5 B. The association shall come under the immediate supervision of the director and
6 shall be subject to the applicable provisions of the insurance laws of this state. Meetings
7 or records of the association may be opened to the public upon majority vote of the board
8 of directors of the association.

9 **Section 162.** That § 58-29C-53 be AMENDED:

10 **58-29C-53. Plan of operation--Effective date--Requirements--Delegation of**
11 **powers.**

12 A. (1) The association shall submit to the director a plan of operation and any
13 amendments thereto necessary or suitable to assure the fair, reasonable, and equitable
14 administration of the association. The plan of operation and any amendments thereto shall
15 become effective upon the director's written approval or unless it has not been
16 disapproved within thirty days.

17 (2) If the association fails to submit a suitable plan of operation within one hundred
18 twenty days following July 1, 2003, or if at any time thereafter the association fails
19 to submit suitable amendments to the plan, the director shall, after notice and
20 hearing, adopt and promulgate such reasonable rules as are necessary or advisable
21 to effectuate the provisions of this chapter. The rules shall continue in force until
22 modified by the director or superseded by a plan submitted by the association and
23 approved by the director.

24 B. All member insurers shall comply with the plan of operation.

25 C. The plan of operation shall, in addition to requirements enumerated elsewhere in
26 this chapter:

- 27 (1) Establish procedures for handling the assets of the association;
28 (2) Establish the amount and method of reimbursing members of the board of directors
29 under § 58-29C-50;
30 (3) Establish regular places and times for meetings including telephone conference calls
31 of the board of directors;
32 (4) Establish procedures for records to be kept of all financial transactions of the
33 association, its agents, and the board of directors;

- (5) Establish the procedures whereby selections for the board of directors will be made and submitted to the director;
- (6) Establish any additional procedures for assessments under § 58-29C-52;
- (7) Contain additional provisions necessary or proper for the execution of the powers and duties of the association;
- (8) Establish procedures whereby a director may be removed for cause, including in the case where a member insurer director becomes an impaired or insolvent insurer;
- (9) Require the board of directors to establish a policy and procedures for addressing conflicts of interests.

D. The plan of operation may provide that any or all powers and duties of the association, except those under subdivision ~~58-29C-51L(3)~~ 58-29C-51(L)(3) and § 58-29C-52, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subpart shall take effect only with the approval of both the board of directors and the director, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

Section 163. That § 58-29C-56 be AMENDED:

58-29C-56. Member assessment as offset against premium tax liability.

A. A member insurer may offset against its premium tax liability to this state an assessment described in subpart ~~58-29C-52H~~ H of § 58-29C-52 to the extent of twenty percent of the amount of the assessment for each of the five calendar years following the year in which the assessment was paid. If the assessment is five hundred dollars or less, the member insurer shall take the total offset in the first year following the year in which the assessment was paid. However, total assessments offset against premium taxes may not exceed two million dollars in any year. If offsets exceed the annual limitation in this section, the excess may be carried forward to a subsequent year in which the annual limitation has not been exceeded. Any excess shall be apportioned among the contributing insurers in relation to their assessment that caused the limit to be exceeded. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business.

1 B. Any sums that are acquired by refund, pursuant to subpart ~~58-29C-52F~~ F of § 58-
2 29C-52, from the association by member insurers, and that have been offset against
3 premium taxes as provided in subpart A of this section, shall be paid by the insurers to
4 this state in such manner as the tax authorities may require. The association shall notify
5 the director that refunds have been made.

6 **Section 164.** That § 58-29C-57 be AMENDED:

7 **58-29C-57. Liability for unpaid assessment not reduced for impaired or**
8 **insolvent insurer--Records of meetings--Association as creditor of impaired or**
9 **insolvent insurer--Liquidation, rehabilitation, or conservation proceedings.**

10 A. This chapter may not be construed to reduce the liability for unpaid assessments
11 of the insureds of an impaired or insolvent insurer operating under a plan with assessment
12 liability.

13 B. Records shall be kept of all meetings of the board of directors to discuss the activities
14 of the association in carrying out its powers and duties under § 58-29C-51. The records
15 of the association with respect to an impaired or insolvent insurer may not be disclosed
16 prior to the termination of a liquidation, rehabilitation, or conservation proceeding
17 involving the impaired or insolvent insurer, except (i) upon the termination of the
18 impairment or insolvency of the insurer, or (ii) upon the order of a court of competent
19 jurisdiction. Nothing in this subpart shall limit the duty of the association to render a report
20 of its activities under § 58-29C-58.

21 C. For the purpose of carrying out its obligations under this chapter, the association
22 shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets
23 attributable to covered policies reduced by any amounts to which the association is entitled
24 as subrogee pursuant to subpart ~~§ 58-29C-51K~~ K of § 58-29C-51. Assets of the impaired
25 or insolvent insurer attributable to covered policies shall be used to continue all covered
26 policies and pay all contractual obligations of the impaired or insolvent insurer as required
27 by this chapter. Assets attributable to covered policies, as used in this subpart, are that
28 proportion of the assets which the reserves that should have been established for such
29 policies bear to the reserves that should have been established for all policies of insurance
30 written by the impaired or insolvent insurer.

31 D. As a creditor of the impaired or insolvent insurer as established in subpart C of this
32 section and consistent with § 58-29B-98, the association and other similar associations
33 shall be entitled to receive a disbursement of assets out of the marshaled assets, from
34 time to time as the assets become available to reimburse it, as a credit against contractual

obligations under this chapter. If the liquidator has not, within one hundred twenty days of a final determination of insolvency of an insurer by the receivership court, made an application to the court for the approval of a proposal to disburse assets out of marshaled assets to guaranty associations having obligations because of the insolvency, then the association shall be entitled to make application to the receivership court for approval of its own proposal to disburse these assets.

E. (1) Prior to the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policy owners of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In such a determination, consideration shall be given to the welfare of the policy owners of the continuing or successor insurer.

(2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be made until and unless the total amount of valid claims of the association with interest thereon for funds expended in carrying out its powers and duties under § 58-29C-51 with respect to the insurer have been fully recovered by the association.

F. (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order has a right to recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (2) to (4), inclusive.

(2) No such distribution is recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(3) Any person who was an affiliate that controlled the insurer at the time the distributions were paid is liable up to the amount of distributions received. Any person who was an affiliate that controlled the insurer at the time the distributions were declared, shall be liable up to the amount of distributions which would have been received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they shall be jointly and severally liable.

1 (4) The maximum amount recoverable under this subpart shall be the amount needed
2 in excess of all other available assets of the insolvent insurer to pay the contractual
3 obligations of the insolvent insurer.

4 (5) If any person liable under subdivision (3) is insolvent, all its affiliates that controlled
5 it at the time the distribution was paid, shall be jointly and severally liable for any
6 resulting deficiency in the amount recovered from the insolvent affiliate.

7 **Section 165.** That § 58-29D-16 be AMENDED:

8 **58-29D-16. Provisions in written agreement as to withdrawals from**
9 **fiduciary account.**

10 The administrator may not pay any claim by withdrawals from a fiduciary account
11 in which premiums or charges are deposited. Withdrawals from such account shall be
12 made as provided in the written agreement between the administrator and the insurer.
13 The written agreement shall address the following:

- 14 (1) Remittance to an insurer entitled to remittance;
15 (2) Deposit in an account maintained in the name of the insurer;
16 (3) Transfer to and deposit in a claims-paying account, ~~with claims to be paid as~~
17 ~~provided for in § 58-29D-17;~~
18 (4) Payment to a group policyholder for remittance to the insurer entitled to such
19 remittance;
20 (5) Payment to the administrator of its commissions, fees or charges; or
21 (6) Remittance of return premium to the person or persons entitled to such return
22 premium.

23 **Section 166.** That § 58-30-190 be AMENDED:

24 **58-30-190. Waiver of privilege or claim of confidentiality.**

25 No waiver of any applicable privilege or claim of confidentiality in the documents,
26 materials, or information occurs as a result of disclosure to the director under ~~§§ 58-30-~~
27 ~~80 to 58-30-93, inclusive §§ 58-30-84 through 58-30-93,~~ or as a result of sharing as
28 authorized in § 58-30-187.

29 **Section 167.** That § 58-35-61 be AMENDED:

58-35-61. Policyholders to vote on merger plan--Notice of vote.

Following the adoption of the resolution approving the plan of merger required by § 58-35-60, a meeting of the policyholders of each of the corporations shall be held to vote upon the proposed merger plan. Written notice of the meeting of the policyholders shall be given to all policyholders, which may be either an annual or special meeting. Written notice shall be given to each policyholder of record whether or not entitled to vote at the meeting, not less than twenty days before the meeting, in the manner provided in §§ 47-1A-701 to ~~47-1A-747, inclusive~~ through 47-1A-747, and §§ 47-1A-1601 to ~~47-1A-1621.3, inclusive~~ through 47-1A-1620, for the giving of notice of meetings of shareholders. Whether the meeting is an annual or special meeting, the notice shall state that the purpose or one of the purposes of the meeting is to consider the proposed plan of merger. A copy of the resolution passed by the board of directors shall be included in or enclosed with the notice.

Section 168. That § 58-38-25 be AMENDED:

58-38-25. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34, ~~§§ 47-15-2, 47-22-4, and 47-14-2~~ § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-38-25 to through 58-38-35, inclusive, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law.

Section 169. That § 58-40-22 be AMENDED:

58-40-22. Formation of voluntary health insurance purchasing organizations.

Notwithstanding the provisions of chapter 47-34, ~~§§ 47-15-2, 47-22-4, and 47-14-2~~ § 47-15-2, and § 47-22-4, any organization may form for the purposes of purchasing group health insurance on a voluntary basis. For purposes of §§ 58-40-22 to through 58-40-32, inclusive, an organization means any nonprofit organization or nonprofit corporation formed under South Dakota law.

Section 170. That § 58-41-99 be AMENDED:

1 **58-41-99. Formation of voluntary health insurance purchasing**
2 **organizations.**

3 Notwithstanding the provisions of chapter 47-34, ~~§§ 47-15-2, 47-22-4, and 47-~~
4 ~~14-2, § 47-15-2, and § 47-22-4,~~ any organization may form for the purposes of
5 purchasing group health insurance on a voluntary basis. For purposes of §§ 58-41-99 ~~to~~
6 through 58-41-109, inclusive, an organization means any nonprofit organization or
7 nonprofit corporation formed under South Dakota law.