

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

938Y0457

HOUSE BILL NO. 1093

Introduced by: Representatives Haggar, Bartling, Campbell, Clark, DiSanto, Goodwin, Hawley, Mickelson, Otten (Herman), Rasmussen, Rhoden, Rozum, Tieszen, Turbiville, and Willadsen and Senators Otten (Ernie), Curd, Ewing, Frerichs, Heinert, Langer, Partridge, Peters, and Stalzer

1 FOR AN ACT ENTITLED, An Act to revise certain definitions relating to employment and
2 workers compensation.

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

4 Section 1. That § 60-1-1 be amended to read:

5 60-1-1. An employee is a person who is employed to render personal service to an employer
6 otherwise than in the pursuit of an independent calling, and who in such service remains entirely
7 under the control and direction of the employer. A person providing a personal service to a
8 religious corporation, religious organization, religious trust, or any entity incorporated,
9 organized, or owned by a religious corporation, religious organization, or religious trust,
10 receiving remuneration from nonmembers for manufacturing or a construction project
11 conducted by its members on or off the property of the religious corporation, religious
12 organization, or religious trust is an employee.

13 Section 2. That § 60-11-8 be amended to read:

14 60-11-8. In §§ 60-11-9 to 60-11-23, inclusive, the term, employer, includes any person, firm,



1 partnership, limited liability company, association, corporation, receiver, or other officer of a
2 court of the state, and any agent or officer of any kind of the above mentioned classes and
3 subject to the provisions of these sections, employing any person of this state. The term also
4 includes a religious corporation, religious organization, religious trust, or any entity
5 incorporated, organized, or owned by a religious corporation, religious organization, or religious
6 trust, receiving remuneration from nonmembers for manufacturing or a construction project
7 conducted by its members on or off the property of the religious corporation, religious
8 organization, or religious trust.

9 Section 3. That § 61-1-36 be amended to read:

10 61-1-36. For the purposes of §§ 61-1-13 and 61-1-15 the term, employment, does not apply
11 to service performed:

12 (1) In the employ of:

13 (a) A church or convention or association of churches, or

14 (b) An organization which is operated primarily for religious purposes and which
15 is operated, supervised, controlled, or principally supported by a church or
16 convention or association of churches; ~~or~~

17 (2) By a duly ordained, commissioned, or licensed minister of a church in the exercise
18 of duties required by the church or by a member of a religious order in the exercise
19 of duties required by the order; ~~or~~

20 (3) In the employ of a school which is not an institution of higher education prior to
21 January 1, 1978; or in the employ of a governmental entity referred to in § 61-1-13
22 after December 31, 1977, if the service is performed by an individual in the exercise
23 of duties:

24 (a) As an elected official;

- 1 (b) As a member of a legislative body, or a member of the judiciary, of a state or
2 political subdivision;
- 3 (c) As a member of the state national guard or air national guard;
- 4 (d) As an employee serving on a temporary basis in case of fire, storm, snow,
5 earthquake, flood, or similar emergency;
- 6 (e) In a position which, under or pursuant to the laws of this state, is designated
7 as a major nontenured policymaking or advisory position, or a policymaking
8 position the performance of the duties of which ordinarily does not require
9 more than eight hours per week; or
- 10 (f) As a precinct election official or automatic tabulating system worker if the
11 amount of remuneration received by the individual during the calendar year
12 for services as a precinct election official or automatic tabulating system
13 worker is less than one thousand dollars; ~~or~~
- 14 (4) In a facility conducted for the purpose of carrying out a program of rehabilitation for
15 any individual whose earning capacity is impaired by age or physical or mental
16 deficiency or injury or providing remunerative work for any individual who because
17 of impaired physical or mental capacity cannot be readily absorbed in the competitive
18 labor market by an individual receiving such rehabilitation or remunerative work; or
- 19 (5) As part of an unemployment work-relief or work-training program assisted or
20 financed in whole or in part by any federal agency or an agency of a state or political
21 subdivision, by an individual receiving such work relief or work training; or
- 22 (6) By an inmate of a custodial or penal institution.

23 Notwithstanding the provisions of this section, employment does include service performed
24 by a person providing a personal service to a religious corporation, religious organization,

1 religious trust, or any entity incorporated, organized, or owned by a religious corporation,
2 religious organization, or religious trust receiving remuneration from nonmembers for
3 manufacturing or a construction project conducted by its members on or off the property of the
4 religious corporation, religious organization, or religious trust.

5 Section 4. That § 62-1-2 be amended to read:

6 62-1-2. As used in this title the term—" employer"—, includes the state and any municipal
7 corporation within the state or any political subdivision of this state, and any individual, firm,
8 association, limited liability company, or corporation, or the receiver or trustee of the same, or
9 the legal representative of a deceased employer, using the service of another for pay, including
10 a religious corporation, religious organization, religious trust, or any entity incorporated,
11 organized, or owned by a religious corporation, religious organization, or religious trust,
12 receiving remuneration from nonmembers for a manufacturing or construction project
13 conducted by its members on or off the property of the religious corporation, religious
14 organization, or religious trust. Any person performing labor incidental to the person's own
15 occupation who has elected to proceed under the provisions of § 58-20-3 by purchasing workers'
16 compensation insurance to cover the person, is deemed to be an employer under this section
17 irrespective of whether the person is using the services of another for pay. If the employer is
18 insured, it shall include the employer's insurer so far as applicable.

19 Section 5. That § 62-1-3 be amended to read:

20 62-1-3. As used in this title, the term, employee, means any person, including a minor, in
21 the services of another under any contract of employment, express or implied, (and including
22 as to a deceased employee, the employee's personal representative, dependents, and other
23 persons to whom compensation may be payable), including a member of a religious corporation,
24 religious organization, or religious trust while performing services for the religious corporation,

1 religious organization, religious trust, or any entity incorporated, organized, or owned by a
2 religious corporation, religious organization, or religious trust, if the religious corporation,
3 religious organization, or religious trust is receiving remuneration from nonmembers, except:

4 (1) Any person whose employment is not in the usual course of the trade, business,
5 occupation, or profession of the employer; or

6 (2) Any official of the state or of any subdivision of government elected or appointed for
7 a regular term of office or to complete the unexpired portion of any such term.

8 However, the governing body of any subdivision may elect to treat officials of the
9 subdivision as employees for the purposes of this section.

10 Any employer performing labor incidental to the employer's occupation who has elected to
11 proceed under the provisions of § 58-20-3 by purchasing workers' compensation insurance to
12 cover himself or herself, may be deemed to be an employee under this section. However,
13 nothing in this section may be construed as to affect that person's rights as an employer for
14 purposes of §§ 62-3-1 and 62-3-2.