2024 SESSION LAWS

OF THE

STATE OF SOUTH DAKOTA

PASSED BY THE NINETY-NINTH SESSION OF THE LEGISLATIVE ASSEMBLY, BEGUN AND HELD IN PIERRE ON JANUARY 9, 2024, AND CONCLUDED ON MARCH 26, 2024.

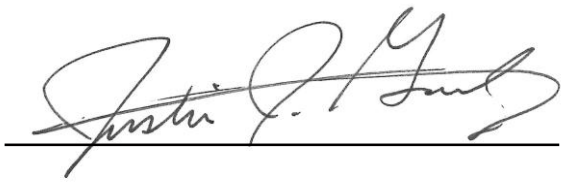
OFFICIAL EDITION

AUTHENTICATION

STATE OF SOUTH DAKOTA,)
) SS
HUGHES COUNTY)

I, Justin J. Goetz, Code Counsel of the State of South Dakota, do hereby certify that the enactments contained in this volume are, with the exception of clerical errors, true and correct copies of the enacted bills and the joint resolutions passed by the Legislature of the State of South Dakota at the Ninety-Ninth Session thereof, with overstrikes and underscores added to show the effects on existing state law. Additionally, this volume contains true and correct copies, with the exception of clerical errors, of the South Dakota Supreme Court's rules and Executive Order 2024-01, including overstrikes and underscores, which have been filed in my office since the publication of the 2023 Session Laws of the State of South Dakota.

Signed this first day of May, 2024.



Justin J. Goetz
South Dakota Code Counsel

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The effective date of most of the legislation in this volume is July 1, 2024. See SDCL 2-14-16. Legislation with other effective dates will contain the effective date as one of its provisions.

51. SB 99 modify provisions pertaining to applying for an absentee ballot application and to declare an emergency.

EDUCATION

52. HB 1058 modify agency reporting requirements on licensure, certification, job placements, and the labor market.
53. SB 127 revise the requirements pertaining to average teacher compensation and to establish a minimum teacher salary.
54. SB 212 allow for the payment of goods or services by a school district between school board meetings in certain circumstances.
55. SB 2 remove provisions for establishing a uniform method for calculating high school credit received from completing a postsecondary course.
56. SB 203 expand certain privileges for individuals who hold an unrestricted enhanced concealed carry permit.
57. SB 198 authorize school districts and nonpublic schools to acquire and administer nasal glucagon.
58. HB 1220 allow an appeal of a decision of the Department of Education regarding special education or related services by a civil action against the department.
59. SB 51 revise property tax levies for school districts and to revise the state aid to general and special education formulas.
60. HB 1187 create a one-year career and technical education instructor educator permit.
61. HB 1020 revise the method by which completion of a required suicide awareness and prevention training is verified.
62. HB 1178 prohibit the Board of Regents or any institution under its control from using state resources for obscene live conduct.
63. HB 1211 repeal the Midwestern Regional Higher Education Compact.
64. SB 1 expand eligibility for the reduced tuition benefit for certain school district and Head Start employees at Board of Regents institutions to school counselors.
65. HB 1003 update a reference to the Internal Revenue Code for purposes of higher education savings plans.
66. SB 94 amend provisions pertaining to the partners in education tax credit program.
67. SB 72 increase the annual limit of tax credits that an insurance company may claim through the partners in education tax credit program.

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68. HB 1023 provide immunity from liability for certain actions of the State Bar and its agents.

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70. SB 152 establish maximum fees for legal publications and to remove related rule-making authority from the Bureau of Administration.
71. SB 211 revise notarial acts.

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75. SB 90 revise and repeal provisions related to forcible entry and detainer.
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101. HB 1077 provide for the disbursement of the catastrophic county poor relief fund to the participating counties in the event of the discontinuance of the fund.

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103. SB 4 revise provisions regarding township contracts for snow removal.
104. HB 1229 add a county as able to be assigned responsibility for secondary highways on municipal boundaries.
105. SB 188 modify the time before which rural access infrastructure grant moneys must be expended or obligated.
106. SB 124 revise the eligibility of roads for the rural access infrastructure fund.

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107. HB 1051 make technical changes to provisions regarding the compensation of agents.
108. SB 112 establish a non-resident title fee.
109. HB 1120 provide special motor vehicle license plates for advanced life support personnel and emergency medical technicians.
110. SB 194 create a license plate for certain retired firefighters and clarify provisions regarding special firefighter license plates.
111. HB 1101 provide a special motor vehicle license plate for recipients of the Legion of Merit award.
112. HB 1068 allow disabled veterans to obtain a standard issue county motor vehicle or motorcycle license plate.
113. HB 1119 create a habitat conservation specialty plate and emblem.
114. HB 1063 amend the valuation service used to value vehicles.
115. HB 1131 waive certain fees for nondriver identification cards for individuals who are homeless.
116. SB 60 update references to certain regulations regarding medical qualifications for certain commercial drivers.
117. SB 59 provide for the downgrade of commercial driver licenses and commercial learners permits upon notice of certain drug and alcohol violations.
118. HB 1225 define a multi-passenger quadricycle and to provide for the regulation of multi-passenger quadricycles.
119. SB 14 expand authorization for the conditional taking of coyotes from snowmobiles.
120. HB 1083 permit a person convicted of certain driving under the influence offenses to drive for certain purposes.
121. HB 1047 enhance the penalties for eluding law enforcement.
122. HB 1095 establish provisions for the operation of automated motor vehicles.

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124. HB 1007 amend the requirement to employ a county veterans' service officer.
125. HB 1008 modify the eligibility for admission to the state veterans' home and repeal the residency requirement.

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126. SB 63 revise provisions related to the licensure and regulation of ambulance services.
127. HB 1097 authorize transportation activities by air ambulance operators.
128. SB 147 provide for the distribution of informational materials regarding palliative care.

151. SB 136 expand the scope of a physician wellness program and to declare an emergency.
152. SB 87 revise provisions related to the State Board of Medical and Osteopathic Examiners and its appointed professional councils.
153. SB 64 revise provisions related to the regulation of emergency medical services and associated personnel.
154. HB 1074 expand eligibility to practice as a dental hygienist under the collaborative supervision of a dentist.
155. HB 1099 establish educational standards for the expanded practice of optometry.
156. HB 1013 adopt the advanced practice registered nurse compact.
157. HB 1233 amend requirements for a cosmetology apprenticeship.
158. SB 81 expand permission on installing electric wiring in a residence.
159. HB 1029 modify and repeal provisions related to the licensure of hearing aid dispensers and audiologists.
160. HB 1015 adopt the social work licensure compact.
161. HB 1017 adopt the psychology interjurisdictional licensure compact.
162. SB 151 revise and repeal provisions related to the licensure of athletic trainers.
163. SB 40 establish a criminal background check requirement for licensure as an occupational therapist or occupational therapy assistant.
164. HB 1012 adopt the interstate counseling licensure compact and revise educational requirements to comply with the compact.

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166. HB 1033 address the administration of State Conservation Commission functions by the Department of Agriculture and Natural Resources.

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167. HB 1031 update the development and implementation of conservation district standards.
168. SB 117 revise provisions regarding industrial hemp.

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169. SB 172 allow a person to temporarily take responsibility of a feral cat for the purpose of spaying or neutering the animal.
170. HB 1145 modify brand registration and use laws.

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171. SB 54 update hunting and fishing residency requirements.
172. SB 173 provide a landowner-on-own-land license for antlerless elk.
173. HB 1228 provide that required exterior hunting garments may be fluorescent pink.
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175. SB 35 provide that certain personal information of a lottery prize winner may only be used for advertising or promotion with the winner's consent.

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179. HB 1186 define the requirements for granting a carbon pipeline easement.
180. HB 1118 revise unclaimed property provisions.

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181. SB 111 revise requirements for mining and mineral exploration.

UNCODIFIED ACTS

209. SJR 502 Providing legislative approval for a future use water permit application by the Lewis and Clark Regional Water System.
210. SB 170 repeal and replace an appropriation regarding the South Dakota women's prison and to declare an emergency.
211. HB 1062 make an appropriation for costs related to the suppression of wildfires impacting the state and to declare an emergency.
212. SB 44 make an appropriation to reimburse health care professionals who have complied with the requirements for health care recruitment assistance programs, and to declare an emergency.
213. HB 1049 authorize the Board of Regents to accept and use easement proceeds for the purposes authorized by the 2022 Session Laws, chapter 198.
214. HB 1129 repeal the session law authorizing the Board of Regents to contract for the design and construction of a new dairy research and extension farm on the campus of South Dakota State University, and to declare an emergency.
215. SB 50 make an appropriation for the site preparation and construction of a prison facility for offenders committed to the Department of Corrections in Rapid City, to transfer moneys to the incarceration construction fund, and to declare an emergency.
216. SB 171 make and change an appropriation related to the construction of the new state public health laboratory and to declare an emergency.
217. HB 1061 make an appropriation for costs related to emergencies and disasters impacting the state and to declare an emergency.
218. HB 1064 make an appropriation for increases in the construction costs of infrastructure at Lake Alvin and Newell Lake, and to declare an emergency.
219. HB 1201 make an appropriation for the teacher apprenticeship pathway program.
220. SB 70 make an appropriation for the replacement of the Richmond Lake dam and spillway, for the general maintenance and repair of other state-owned dams, and to declare an emergency.
221. SB 66 make an appropriation for eligible water, wastewater, and storm water projects throughout state government, and to declare an emergency.
222. SB 67 provide for the sale of certain real estate located in Hughes County and to provide for the deposit of the proceeds into a continuously appropriated fund.
223. HB 1065 make an appropriation for the design and construction of a multi-use building on the grounds of the State Fair and to declare an emergency.
224. SB 49 make an appropriation for the site preparation of a prison facility for offenders committed to the Department of Corrections, to transfer moneys to the incarceration construction fund, and to declare an emergency.
225. SB 45 make an appropriation for the establishment of a Center for Quantum Information Science and Technology and to declare an emergency.
226. SB 83 make an appropriation for the revised construction costs of maintenance shops for the Wildland Fire Suppression Division and to declare an emergency.
227. HB 1022 make an appropriation to the Department of Education to provide professional development in literacy to teachers, and to declare an emergency.

EXECUTIVE ORDERS

Chapter 1

EXO 24-01

EXECUTIVE ORDER

Executive Reorganization Order 2024-01

Whereas, Article IV, Section 8, of the Constitution of the State of South Dakota provides in relevant part that, "Except as to elected constitutional officers, the Governor may make such changes in the organization of offices, boards, commissions, agencies and instrumentalities, and in allocation of their functions, powers and duties, as [the Governor] considers necessary for efficient administration. If such changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the Legislature within five legislative days after it convenes, and shall become effective, and shall have the force of law, within ninety days after submission, unless disapproved by a resolution concurred in by a majority of all the members of either house"; and,

Whereas, This Executive Order has been submitted to the 99th Legislative Assembly on the 1st legislative day, the 9th day of January, 2024:

IT IS, THEREFORE, BY EXECUTIVE ORDER, directed that the executive branch of state government be reorganized to comply with the following sections of this Order.

GENERAL PROVISIONS

Section 1. This Executive Order shall be known and may be cited as the "Executive Reorganization Order 2024-01".

Section 2. Any agency not enumerated in this Order but established by law within another agency which is transferred to a principal department under this Order, shall also be transferred in its current form to the same principal department and its functions shall be allocated between itself and the principal department as they are now allocated between itself and the agency within which it is established.

Section 3. "Agency" as used in this Order shall mean any board, authority, commission, department, bureau, division, or any other unit or organization of state government.

Section 4. "Function" as used in this Order shall mean any authority, power, responsibility, duty, or activity of an agency, whether or not provided for by law.

Section 5. Unless otherwise provided by this Order, division directors shall be appointed by the head of the agency of which the division is a part and shall be removable at the pleasure of the agency head, provided that the appointment and removal of division directors shall be subject to approval by the Governor.

Section 6. It is the intent of this Order not to repeal or amend any laws relating to functions performed by an agency, unless the intent is specifically expressed in this Order or unless there is an irreconcilable conflict between this Order and those laws.

Section 7. If a part of this Order is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this Order is invalid in one or more of its applications, the part remains in effect in all valid applications.

Section 8. Except when inconsistent with the other provisions of this Order, all rules, regulations, and standards of the agencies reorganized by this Order, in effect on the effective date of this Order, shall continue with full force and effect until they are specifically altered, amended, or revoked in the manner provided by law, unless the statutory authority for the rules, regulations, and standards is superseded by this Order.

Section 9. It is hereby declared that the sections, clauses, sentences, and parts of this Order are severable, are not matters of mutual essential inducement, and any of them may be excised by any court of competent jurisdiction if any section, clause, sentence, or part of this Order would otherwise be unconstitutional or ineffective.

Section 10. The rights, privileges, and duties of, including but not limited to, the holders of bonds and other obligations issued, and of the parties to contracts, leases, indentures, loan agreements, and other transactions, entered into before the effective date of this Order by the state or by any agency, officer, or employee thereof, and covenants and agreements as set forth therein, remain in effect, and none of those rights, privileges, duties, covenants, or agreements are impaired or diminished by abolition of an agency in this Order. The agency to which functions of another agency are transferred is substituted for that agency and succeeds to its rights and leases, indentures, privileges, duties, covenants, agreements, and other transactions.

Section 11. No judicial or administrative suit, action, or other proceeding lawfully commenced before the effective date of this Order by or against any agency or any officer of the state, in their official capacity or in relation to the discharge of their official duties, shall abate or be affected by reason of the taking effect of any reorganization under the provisions of this Order. The court may allow the suit, action, or other proceeding to be maintained by or against the successor of any agency or any officer affected by this Order.

Section 12. If any part of this Order is ruled to be in conflict with federal requirements which are a prescribed condition to the receipt of federal aid by the state, an agency, or a political subdivision, that part of this Order has no effect and the Governor may by executive order make necessary changes to this Order to receive federal aid, and the changes will remain in effect until the last legislative day of the next legislative session or until the Legislature completes legislation addressed to the same question, whichever comes first.

Section 13. Pursuant to § 2-16-9, the Code Commission and code counsel of the Legislative Research Council are requested to make the name and title changes necessary to correlate and integrate the organizational changes made by this Executive Reorganization Order into the South Dakota Codified Laws.

Section 14. Any provisions of law in conflict with this Order are superseded.

Section 15. Whenever a function is transferred by this Order, all personnel, records, property, unexpended balances of appropriations, allocations, or other funds utilized in performing the function are also transferred by this Order.

Section 16. The effective date of this Executive Reorganization Order 2024-01 shall be ninety days after its submission to the Legislature.

Bureau of Human Resources and Administration Created.

Section 17. There is hereby created a Bureau of Human Resources and Administration. The head of the Bureau of Human Resources and Administration will be the Commissioner of the Bureau of Human Resources and Administration who shall be appointed by, and serve at the pleasure of, the Governor pursuant to § 1-33-4.

Section 18. Except as otherwise provided in this Order, the functions and programs of the former Bureau of Administration and the former Bureau of Human Resources, along with the functions of the former Commissioner of Administration and the former Commissioner of Human Resources are hereby transferred to the Bureau of Human Resources and Administration and the Commissioner of Human Resources and Administration, respectively.

Bureau of Human Resources Abolished. Functions of former Bureau of Human Resources transferred to Bureau of Human Resources and Administration.

Section 19. The Bureau of Human Resources is hereby abolished. The position of Commissioner of Human Resources is hereby abolished.

Section 20. The Bureau of Human Resources Student Internship created under § 1-33-10.1 and its functions are transferred to the Bureau of Human Resources and Administration.

Bureau of Administration Abolished. Functions of former Bureau of Administration transferred to Bureau of Human Resources and Administration.

Section 21. The Bureau of Administration is hereby abolished. The position of Commissioner of Administration is hereby abolished.

Section 22. The Administrative functions performed by Bureau of Administration for boards and commissions created under § 1-33-8.1 and their functions are transferred to the Bureau of Human Resources and Administration.

Other Reorganization Provisions.

Section 23. That § 1-14-2 be REPEALED: ~~No person may be appointed as the commissioner of administration unless the person has had progressively responsible experience in administration.~~

Section 24. That § 1-14-3 be REPEALED: ~~The commissioner of administration, under the general direction and control of the Governor, shall execute the powers and discharge the duties vested by law in the Bureau of Administration. The commissioner shall qualify by taking and filing with the secretary of state the constitutional oath of office.~~

Section 25. That § 1-14-12 be REPEALED: ~~The commissioner of administration shall administer the Bureau of Administration. The bureau shall:~~

~~(1) Keep an exact and true inventory of all property, real and personal, belonging to the State of South Dakota and promulgate rules pursuant to chapter 1-26 enumerating the types and classes of public personal property to be included in the inventory required by § 5-24-1;~~

~~(2) Administer the procurement of supplies, services, and public improvements as prescribed in chapters 5-18A, 5-18B, and 5-18D;~~

~~(3) Supervise such central administrative services as transportation, mail, records management, and document reproduction services, make provisions for the supplying of office supplies and furniture;~~

~~(4) Maintain the buildings and grounds of the capitol complex and install central facilities to be used by all state agencies under such rules the Bureau of Administration promulgates pursuant to chapter 1-26;~~

~~(5) Contract for the provision of food services, candy, and beverages in the capitol complex;~~

~~(6) Supervise the administration of the Office of Hearings Examiners;~~

~~(7) Administer the federal surplus property allotted to the State of South Dakota;~~

~~(8) Provide for the lease of such real property as shall be necessary for the operation of state government;~~

~~(9) Administer a program of risk management for state government;~~

~~(10) Contract for such services as are required by multiple state agencies, if such a contract improves the efficiency of state government; and~~

~~(11) Any other function as may be required by statute, executive order, or administrative action.~~

Section 26. That chapter 1-33 be amended with a NEW SECTION:

No person may be appointed as the commissioner of human resources and administration unless the person has had experience in administration.

Section 27. That chapter 1-33 be amended with a NEW SECTION:

The commissioner of human resources and administration, under the general direction and control of the Governor, shall execute the powers and discharge the duties vested by law in the Bureau of Human Resources and Administration. The commissioner shall qualify by taking and filing with the secretary of state the constitutional oath of office.

Section 28. That § 1-33-9 be AMENDED:

The Bureau of Human Resources and Administration shall:

(1) Provide workers' compensation coverage and a group health and flexible benefit plan for all state employees unless such duties are delegated to another agency pursuant to chapter 1-24;

(2) Administer recruitment and classification for all civil service employees unless such duties are delegated to another agency pursuant to chapter 1-24;

(3) Provide human resource management and programs including programs governing human resource planning, training and development, internships, performance evaluation, employee assessment and testing, classification, compensation, recruitment, and other matters relating to human resource management for all of the executive branch of state government under the control of the Governor and by agreement for other

state government agencies;

(4) Perform all administrative functions for the Civil Service Commission;

(5) Employ such staff as are necessary to perform its duties; ~~and~~

(6) Contract as is necessary to perform its duties~~.~~;

(7) Keep an exact and true inventory of all property, real and personal, belonging to the state and promulgate rules pursuant to chapter 1-26 enumerating the types and classes of public personal property to be included in the inventory required by § 5-24-1;

(8) Administer the procurement of supplies, services, and public improvements as prescribed in chapters 5-18A, 5-18B, and 5-18D;

(9) Supervise such central administrative services as transportation, mail, records management, and document reproduction services, and make provisions for the supplying of office supplies and furniture;

(10) Maintain the buildings and grounds of the capitol complex and install central facilities to be used by all state agencies under rules the bureau promulgates pursuant to chapter 1-26;

(11) Contract for the provision of food services, candy, and beverages in the capitol complex;

(12) Supervise the administration of the Office of Hearings Examiners;

(13) Administer the federal surplus property allotted to the state;

(14) Provide for the lease of real property necessary for the operation of state government;

(15) Administer a program of risk management for state government;

(16) Contract for services required by multiple state agencies, if the contract improves the efficiency of state government; and

(17) Take any other function as may be required by statute, executive order, or administrative action.

Section 29. That chapter 1-33 be amended with a NEW SECTION:

The Bureau of Human Resources and Administration shall perform all administrative functions except special budgetary functions (as defined in § 1-32-1) of the following agencies:

(1) The Records Destruction Board created by chapter 1-27; and

(2) The Capitol Complex Restoration and Beautification Commission continued by chapter 5-15.

Section 30. That § 1-33-3 be AMENDED:

The Department of Executive Management consists of the Bureau of Finance and Management, the Bureau of ~~Administration, the Bureau of~~ Human Resources and Administration, the Bureau of Information and Telecommunications, the Governor's Office of Economic Development, and any other agencies created by administrative action or law and placed under the Department of Executive Management.

Section 31. Pursuant to § 2-16-9, the Code Commission and code counsel of the Legislative Research Council are requested to transfer the following sections to chapter 1-33, update the cross-references, and amend the following sections by striking "Bureau of Administration", and inserting "Bureau of Human Resources and

Administration" and by striking "commissioner of administration", and inserting "commissioner of human resources and administration":

Title 1:
1-33-9.1;1-14-3.1; 1-14-4; 1-14-12.14; 1-14-12.15; 1-14-12.16; 1-14-12.17; 1-14-14; 1-14-14.1; 1-14-18; 1-14-19.

Section 32. Pursuant to § 2-16-9, the Code Commission and code counsel of the Legislative Research Council are requested to transfer § 1-33-64 to chapter 1-33.

Section 33. That § 1-33-10 be REPEALED: ~~The Bureau of Human Resources is administered by a commissioner appointed by the Governor with the advice and consent of the Senate. The commissioner serves at the pleasure of the Governor.~~

Section 34. Pursuant to § 2-16-9, the Code Commission and Code Counsel of the Legislative Research Council are requested to amend the following sections by striking "Bureau of Administration" and inserting "Bureau of Human Resources and Administration" and by striking "commissioner of the bureau of administration" or by striking "commissioner of administration" and inserting "commissioner of human resources and administration":

Title 1:
1-6-6; 1-6-17; 1-6-18; 1-6-19; 1-6-21; 1-15-10; 1-26A-8; 1-26D-1; 1-27-11.1; 1-27-12; 1-27-12.1; 1-27-16; 1-27-17; 1-27-35; 1-27-45; 1-33-3; 1-33-42; 1-33B-6; 1-36A-1.11; 1-36A-1.19; 1-55-2; 1-55-4; 1-55-14; 1-55-15

Title 2:
2-7-1; 2-13-7; 2-13-12; 2-16-19

Title 3:
3-1-5; 3-5-5.1; 3-22-2; 3-22-5; 3-22-12

Title 4:
4-7-5; 4-8A-7

Title 5:
5-12-11.1; 5-12-12; 5-12-13; 5-12-37; 5-14-2; 5-14-3; 5-14-4; 5-14-5; 5-14-6; 5-14-8.1; 5-14-9; 5-14-11; 5-14-30; 5-14-31; 5-14-34; 5-14-35; 5-14-36; 5-14-37; 5-14-38; 5-14-39; 5-14-40; 5-15-1.1; 5-15-5; 5-15-6; 5-15-9; 5-15-24; 5-15-25; 5-15-26; 5-15-27; 5-15-28; 5-15-29; 5-15-30; 5-15-34; 5-15-45; 5-18A-11; 5-18A-13; 5-18A-22; 5-18A-27; 5-18A-28; 5-18A-34; 5-18A-38; 5-18A-41; 5-18A-52; 5-18B-5; 5-18B-20; 5-18D-1; 5-18D-2; 5-18D-3; 5-18D-4; 5-18D-5; 5-18D-6; 5-18D-7; 5-18D-8; 5-18D-9; 5-18D-10; 5-18D-11; 5-18D-12; 5-18D-13; 5-18D-14; 5-18D-15; 5-18D-16; 5-18D-17; 5-18D-23; 5-18D-24; 5-24-1; 5-24-1.1; 5-24-3; 5-24-7; 5-24-13; 5-24-14; 5-24A-1; 5-24A-2; 5-24A-14; 5-24A-16; 5-25-4

Title 6:
6-13-14

Title 13:
13-49-15

Title 15:
15-39-47

Title 17:
17-2-19

Title 23:
23-3-8

Title 31:
31-2-27

Title 34:
34-31-6

Title 38:
38-20-2

Title 41:
41-2-20

Title 46A:
46A-1-80.1

Section 35. Pursuant to § 2-16-9, the Code Commission and code counsel of the Legislative Research Council are requested to amend the following sections by striking "Bureau of Human Resources" and inserting "Bureau of Human Resources and Administration" and by striking "commissioner of the bureau of human resources" and inserting "commissioner of the bureau of human resources and administration":

Title 1:
1-18C-3; 1-18C-6; 1-33-10.1

Title 2:
2-14-2

Title 3:
3-6C-1; 3-8-13; 3-12C-101

Title 5:
5-18A-17.2; 5-18A-17.3; 5-18A-49; 5-24A-18

Title 15:
15-15A-7

Title 26:
26-8A-12.2

Title 36:
36-25-12

Title 38:
38-1-12; 38-1-13; 38-10-14

Title 49:
49-1-7

Title 58:
58-2-13; 58-2-17; 58-17-145.1

Dated in Pierre, South Dakota this 9th day of January, 2024.

JOINT RESOLUTIONS

Chapter 2

(Senate Joint Resolution 501)

A JOINT RESOLUTION, Proposing and submitting to the voters at the next general election, an amendment to the Constitution of the State of South Dakota, authorizing the state to impose work requirements on certain individuals who are eligible for expanded Medicaid.

Section 1. That at the next general election held in the state, the following amendment to Article XXI, § 10 of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint Resolution, which is hereby agreed to, shall be submitted to the electors of the state for approval.

Section 2. That Article XXI, § 10 of the Constitution of the State of South Dakota, be AMENDED:

Beginning July 1, 2023, the State of South Dakota shall provide Medicaid benefits to any person over eighteen and under sixty-five whose income is at or below one hundred thirty-three percent of the federal poverty level plus five percent of the federal poverty level for the applicable family size, as authorized by federal law as of January 1, 2021. Such person shall receive coverage that meets or exceeds the benchmark or benchmark-equivalent coverage requirements, as such terms are defined by federal law as of January 1, 2021.

The State of South Dakota may not impose greater or additional burdens or restrictions on eligibility or enrollment standards, methodologies, or practices on any person eligible under this section than on any person otherwise eligible for Medicaid under South Dakota law, except that the State of South Dakota may, to the extent permitted by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services, impose a work requirement on any person, eligible under this section, who has not been diagnosed as being physically or mentally disabled.

No later than March 1, 2023, the Department of Social Services shall submit all state plan amendments necessary to implement this section to the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services.

The State of South Dakota shall take all actions necessary to maximize the federal financial medical assistance percentage in funding medical assistance pursuant to this section.

This section shall be broadly construed to accomplish its purposes and intents. If any provision in this section or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of the section that can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this section are severable.

Filed February 29, 2024

STATE AFFAIRS AND GOVERNMENT

Chapter 3
(Senate Bill 108)

An Act to revise a provision related to retrocession of jurisdiction over federal enclaves.

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

Section 1. That § 1-1-1.1 be AMENDED:

1-1-1.1. By appropriate executive order, the Governor may accept on behalf of the state~~,~~ retrocession of full or partial jurisdiction, juvenile, criminal, or civil, over any roads, highways, or other lands in federal enclaves, excluding Indian reservations and federal enclaves outside the boundaries of an Indian reservation established for Indian use, within the state where ~~such~~ retrocession ~~has been~~ is offered by appropriate federal authority. Documents concerning ~~such action shall~~ the retrocession must be filed in the Office of the Secretary of State and in the office of the register of deeds of the county wherein ~~such~~ the lands are located. The documents must:

(1) State the subject matter for the jurisdiction offer;

(2) Provide a metes-and-bounds description of the boundary of the jurisdiction offer; and

(3) Indicate whether the request includes future expansions of land acquired for military purposes.

Upon the establishment of concurrent jurisdiction, any state or local agency may enter into a reciprocal agreement or memorandum of understanding with any agency of the United States for coordination and designation of responsibilities related to the transfer of jurisdiction.

Signed February 21, 2024

Chapter 4
(House Bill 1067)

An Act to designate Medal of Honor Recognition Day.

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

Section 1. That chapter 1-5 be amended with a NEW SECTION:

The twenty-fifth day of March, to be known as Medal of Honor Recognition Day, is observed in this state as a working holiday. Medal of Honor Recognition Day is dedicated to the remembrance and recognition of those members of the armed forces of the United States who have received the Medal of Honor.

Signed February 21, 2024

Chapter 5

(Senate Bill 24)

An Act to increase the maximum user fee for a participant submitting to wear a drug patch under the 24/7 sobriety program.

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

Section 1. That § 1-11-28 be AMENDED:

1-11-28. A participant submitting to wear a drug patch shall pay a user fee of not more than ~~fifty~~ seventy dollars for each drug patch attached.

Signed February 5, 2024

Chapter 6

(House Bill 1073)

An Act to keep interest earned on incarceration construction fund moneys in the same fund.

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

Section 1. That § 1-15-37 be AMENDED:

1-15-37. There is hereby established in the state treasury the incarceration construction fund. Expenditures out of the fund must only be by special appropriation of the Legislature and must be used for the capital construction or improvement of incarceration facilities located in South Dakota. No moneys shall be appropriated or expended from the fund until such a time as a legislative task force provides a report to the Legislature regarding incarceration and corrections within the State. Interest earned on moneys in the fund ~~must be deposited into the general fund.~~ must remain in the fund.

Signed February 21, 2024

Chapter 7

(Senate Bill 26)

An Act to clarify the membership of the Open Meeting Commission.

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

Section 1. That § 1-25-8 be AMENDED:

1-25-8. The South Dakota Open Meeting Commission ~~shall be~~ is comprised of five state's attorneys or deputy state's attorneys appointed by the attorney general. Each commissioner ~~shall serve~~ serves at the pleasure of the attorney general. ~~A~~ The members of the commission shall choose a chair of the

commission ~~shall be chosen~~ annually ~~from the membership of the commission by a majority of its members~~ by majority vote.

Signed February 12, 2024

Chapter 8

(House Bill 1006)

An Act to increase the amount of time permitted the Interim Rules Review Committee to review final permanent rulemaking materials.

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

Section 1. That § 1-26-4 be AMENDED:

1-26-4. The following notice, service, and public hearing procedure must be used to adopt, amend, or repeal a permanent rule:

(1) An agency shall serve a copy of a proposed rule and any publication described in § 1-26-6.6 upon the departmental secretary, bureau commissioner, public utilities commissioner, or constitutional officer to which it is attached for the secretary's, commissioner's, or officer's written approval to proceed;

(2) After receiving the written approval of the secretary, commissioner, or officer to proceed, the agency shall serve the director with a copy of: the proposed rule; any publication described in § 1-26-6.6; the fiscal note required by § 1-26-4.2; the impact statement on small business required by § 1-26-2.1; the housing cost impact statement required by § 1-26-2.3; and the notice of hearing required by § 1-26-4.1. The copy of these documents must be served at least twenty days before the public hearing to adopt the proposed rule. Any publication described in § 1-26-6.6 must be returned to the agency upon completion of the director's review and retained by the agency. Twenty days before the public hearing, the agency shall serve the commissioner of the Bureau of Finance and Management with a copy of: the proposed rule; the fiscal note required by § 1-26-4.2; the impact statement on small business required by § 1-26-2.1; the housing cost impact statement required by § 1-26-2.3; and the notice of hearing required by § 1-26-4.1;

(3) At least twenty days before the public hearing, the agency shall:

(a) Publish the notice of hearing in the manner prescribed by § 1-26-4.1; and

(b) Publish, on the agency's website, the housing cost impact statement required by § 1-26-2.3;

(4) After reviewing the proposed rule pursuant to § 1-26-6.5, the director shall advise the agency of any recommended corrections to the proposed rule. If the agency does not concur with any recommendation of the director, the agency may appeal the recommended correction to the Interim Rules Review Committee for appropriate action;

(5) The agency shall afford all interested persons reasonable opportunity to submit amendments, data, opinions, or arguments at a public hearing held to adopt the rule. The hearing may be continued from time to time. The

agency shall keep minutes of the hearing. A majority of the members of any board or commission authorized to pass rules must be present during the course of the public hearing;

(6) If the authority promulgating the rule is a secretary, commissioner, or officer, the agency shall accept written comments regarding the proposed rule for a period of ten days after the public hearing. If the authority promulgating the rule is a part-time citizen board, commission, committee, or task force, each interested person shall submit written comments at least seventy-two hours before the public hearing. The seventy-two hours does not include the day of the public hearing. The written comments may be submitted by mail or email. The record of written comments may be closed at the conclusion of the public hearing. The hearing may be continued for the purpose of taking additional comments;

(7) After the written comment period, the agency shall consider all amendments, data, opinions, or arguments regarding the proposed rule. A proposed rule may be modified or amended at this time to include or exclude matters that were described in the notice of hearing; and

(8) The agency shall serve the minutes of the hearing, a complete record of written comments, the impact statement on small business, the housing cost impact statement, the fiscal note, the information required by § 1-26-4.8, and a corrected copy of the rule on the members of the Interim Rules Review Committee, at least ~~five~~ seven days before the agency appears before the committee to present the rules.

The time periods specified in this section may be extended by the agency. The requirement to serve the committee in subdivision (8) may be waived by the committee chair, if the agency presents sufficient reasons to the committee chair that the agency is unable to comply with the time limit. The waiver may not be granted solely for the convenience of the agency.

Signed February 5, 2024

Chapter 9

(House Bill 1085)

An Act to specify the venue of appeal to circuit court for persons committed to a mental health facility.

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

Section 1. That § 1-26-31.1 be AMENDED:

1-26-31.1. The venue of the appeal is as follows:

(1) If the appellant is a resident of this state, to the circuit court for the county of the appellant's residence or to the circuit court for Hughes County, as the appellant may elect;

(2) If the appellant is a nonresident or a foreign corporation, to the circuit court for the county of appellant's principal place of business in South Dakota or to the circuit court for Hughes County, as the appellant may elect;

(3) If the appellant is committed to a mental health facility, to the circuit court for the county in which the mental health facility is located;

~~(3)~~(4) The parties may stipulate for venue in any county in the state, and the circuit court for ~~such~~ that county shall ~~thereupon~~ hear the appeal; and

~~(4) An~~ (5) For an appeal from a final decision, ruling, or action rendered by an administrative appeals process adopted by a home-rule municipality ~~shall be appealed~~, the appellant must appeal to the circuit court in which the home-rule municipality is located.

Appeals from a single administrative action may not proceed in more than one county. If multiple appeals of a single action are filed in more than one county, the appeals ~~shall~~ must be consolidated and heard in the county in which the appeal is first filed. If more than one appeal is first filed on the same date and a stipulation among the parties as to venue cannot be reached, the venue of the appeal is in the circuit court for Hughes County.

Signed February 28, 2024

Chapter 10

(House Bill 1005)

An Act to revise the manner of citing the Administrative Rules of South Dakota.

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

Section 1. That § 1-26A-7 be AMENDED:

1-26A-7. The Administrative Rules of South Dakota as amended, printed, and published pursuant to law, shall be known as the Administrative Rules of South Dakota, and shall be cited as ~~"(year of publication) ~~ARSD~~"~~ followed by the appropriate number of the title, article, chapter, or section, and then the year of publication in parentheses where relevant.

Signed February 5, 2024

Chapter 11

(Senate Bill 61)

An Act to repeal the Visitation Grant Advisory Group.

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

Section 1. That § 1-36-35 be REPEALED:

~~There is hereby created the Visitation Grant Advisory Group to allocate funds received by the Department of Public Safety through Part D of Title IV (U.S.C. 651-669). The advisory group shall be composed of three circuit court judges appointed by the Chief Justice of the Supreme Court, two members in good standing of the South Dakota Bar Association with experience in the law of~~

~~domestic relations, custody, and visitation appointed by the Governor, two at large members appointed by the Governor, and two legislators, one appointed by the speaker of the House of Representatives and one appointed by the president pro tempore of the Senate. The terms of the members of the first advisory group shall be:~~

~~(1) One-third selected for one-year terms;~~

~~(2) One-third selected for two-year terms; and~~

~~(3) One-third selected for three-year terms.~~

~~The term of each appointment to the advisory group is three years. No member may serve more than two consecutive three-year terms. The members may elect a chair from among the members. The advisory group shall be staffed by the Department of Public Safety.~~

Signed March 6, 2024

Chapter 12

(House Bill 1232)

An Act to create the Indian Child Welfare Advisory Council.

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

Section 1. That a NEW SECTION be added to chapter 1-36:

The Indian Child Welfare Advisory Council is hereby established within the Department of Social Services to facilitate communication, collaboration, and cooperation between the tribes, the department, and other subject matter experts; to promote the exchange of ideas and innovative solutions related to Indian child welfare; to expand partnerships with applicable stakeholders; and to assist the department in formulating policies and procedures relating to Indian child welfare.

The council consists of a representative of the department, appointed by the secretary of the Department of Social Services, one representative from each of the nine tribes in South Dakota, appointed by the tribal council of the tribe, one member of the House of Representatives appointed by the speaker of the House of Representatives, and one member of the Senate appointed by the president pro tempore of the Senate. The council members shall serve for two-year terms.

Section 2. That a NEW SECTION be added to chapter 1-36:

The Indian Child Welfare Advisory Council shall meet at least one time each year, at the call of the chair. The representative of the Department of Social Services shall serve as the chair of the advisory council.

Signed March 6, 2024

Chapter 13
(Senate Bill 46)

An Act to authorize the disclosure of referral status by Department of Human Services personnel.

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

Section 1. That chapter 1-36A be amended with a NEW SECTION:

Except as otherwise provided for in § 1-36A-29.1, the Department of Human Services may disclose information to referring individuals and entities, for the purpose of relaying the status of their referral.

Signed February 27, 2024

Chapter 14
(Senate Bill 65)

An Act to modify time limits for collection efforts for debts owed to the state.

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

Section 1. That § 1-55-1 be AMENDED:

1-55-1. Terms used in this chapter mean:

(1) "Account receivable cycle," the period of time~~, not to exceed one hundred eighty days,~~ during which the center may attempt to collect on a debt before the center determines the debt is~~ forwarded to any collection agency in accordance with § 1-55-14~~ uncollectible and returns the remaining balance of the debt to the referring entity;

(2) "Center," the obligation recovery center;

(3) "Debt," a legal obligation to pay money, including any principal, any interest that has accrued or will accrue until the debt is paid, any penalties, any costs, and any other charges permitted by law. The term also includes any obligation of any kind referred to the center for collection by any agency of the state, the Unified Judicial System, the Board of Regents, a technical college supported by the state under § 13-39A-42, or a constitutional office;

(4) "Debtor," a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state, or any person that owes any obligation being collected by the center;

(5) "Bad debt," any debt due an agency of the state, the Board of Regent's system, any technical college supported by the state under § 13-39A-42, or a constitutional office that is no longer subject to an administrative appeal or judicial review following an administrative appeal, or any costs, fines, fees, or restitution ordered in any adult criminal proceeding through

the Unified Judicial System no longer subject to direct appeal under § 23A-32-2;

(6) "Final notification," the notification provided by § 1-55-7; and

(7) "Referring entity," the entity referring the debt to the state obligation recovery center for collection.

Section 2. That § 1-55-14 be AMENDED:

1-55-14. ~~If the center is unable to collect any debt referred to it within the account receivable cycle, the~~ At such time as the center determines is appropriate, the center ~~shall~~ may forward the debt to a collection agency or agencies for collection for a period of no less than one year~~,~~ or as otherwise stipulated in the contract between the center and the collection agency. The debt collection agency ~~shall~~ must be permitted to add a collection charge, not to exceed twenty percent of the debt, to the debt forwarded to the collection agency as payment for its collection services. The center or a collection agency may retain debt beyond the ~~account receivable cycle or other~~ applicable collection period if the entity is actively engaged in substantive collection efforts~~,~~ or based on other good cause.

The Bureau of Administration shall promulgate rules pursuant to chapter 1-26 concerning the process of contracting with and referring debt to debt collection agencies.

Signed February 5, 2024

Chapter 15

(Senate Bill 165)

An Act to create the South Dakota-Ireland Trade Commission.

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

Section 1. That a NEW SECTION be added to title 1:

The South Dakota-Ireland Trade Commission is created to:

(1) Advance bilateral trade and investment between this state and Ireland;

(2) Initiate joint action on issues of mutual interest to this state and Ireland;

(3) Promote business and academic exchanges between this state and Ireland;

(4) Encourage mutual economic support between this state and Ireland;

(5) Encourage mutual investment in the infrastructure of this state and Ireland; and

(6) Address any other issues deemed to be of mutual benefit to this state and Ireland.

Section 2. That a NEW SECTION be added to title 1:

The South Dakota-Ireland Trade Commission consists of:

(1) Two members of the Senate, appointed by the president pro tempore of

the Senate;

(2) Two members of the House of Representatives, appointed by the speaker of the House;

(3) A representative of a private sector association headquartered in this state and focused on the promotion of international trade, appointed by the Executive Board of the Legislative Research Council; and

(4) The secretary of the Department of Agriculture and Natural Resources, or the secretary's designee.

Each appointed member shall serve for a term of two years and may be reappointed without limit. If a position becomes vacant, the position must be filled, for the duration of the term, in the same manner as the original appointment.

Section 3. That a NEW SECTION be added to title 1:

The Department of Agriculture and Natural Resources shall provide administrative services to the South Dakota-Ireland Trade Commission.

At the initial meeting of the commission and annually thereafter, the members shall select one from among the four appointed legislators to serve as the chair. The commission shall meet at least quarterly, at the call of the chair.

Section 4. That a NEW SECTION be added to title 1:

There is established in the state treasury the South Dakota-Ireland trade fund. The Department of Agriculture and Natural Resources shall administer the fund. The purpose of the fund is to defray the administrative expenses of the commission and support the commission's efforts to carry out its purposes, as set forth in section 1 of this Act.

The fund consists of all moneys raised by or on behalf of the commission, together with any gifts, grants, or other donations. Interest on moneys credited to the fund must remain in the fund.

The South Dakota-Ireland trade fund is continuously appropriated to the South Dakota-Ireland Trade Commission.

Section 5. That a NEW SECTION be added to title 1:

Each member of the South Dakota-Ireland Trade Commission is entitled to receive reimbursement for necessary expenses, as provided for in § 4-7-10.4, from moneys in the South Dakota-Ireland trade fund, if the member is performing duties directed by the commission.

Section 6. That a NEW SECTION be added to title 1:

On or before November first of each year, the South Dakota-Ireland Trade Commission shall provide a report to the Executive Board of the Legislative Research Council. The report must include:

(1) A description of the commission's work;

(2) A description of benefits to the state and to sectors involved in international trade, attributable to the commission's efforts;

(3) Recommendations for legislative action that would support trade between this state and Ireland; and

(4) A summary of anticipated commission activities in the ensuing year.

Signed March 15, 2024

LEGISLATURE AND STATUTES

Chapter 16

(Senate Bill 182)

An Act to repeal and revise certain provisions regarding the petition circulation process to comply with federal court decisions.

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

Section 1. That § 2-1-1.1 be AMENDED:

2-1-1.1. A petition as it is to be circulated for an initiated amendment to the Constitution must be filed with the secretary of state, including an electronic copy of the petition, prior to circulation for signatures and at least one year before the next general election at which the initiated amendment is proposed to be submitted to the voters. The petition filing must:

(1) Contain the full text of the initiated amendment in fourteen-point font;

(2) Contain the date of the general election at which the initiated amendment is to be submitted;

(3) Contain the title and explanation as prepared by the attorney general;

(4) Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and

(5) Be accompanied by a statement of organization as provided in § 12-27-6.

Each petition circulator shall provide to each person who signs the petition a ~~form~~ circulator handout containing the title and explanation of the initiated amendment to the Constitution as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; and a statement whether the petition circulator is a volunteer or paid ~~petition~~ circulator and, if a paid circulator, the amount the circulator is being paid. ~~The form must be approved by the secretary of state prior to circulation.~~ The secretary of state shall approve the circulator handout for each initiated amendment to the Constitution before the petition is circulated. ~~The petition form, as prescribed by the State Board of Elections, must include the paid circulator identification number within the verification of any paid circulator.~~

For any initiated amendment petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. A sworn affidavit, signed by at least two-thirds of the petition sponsors, stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures ~~shall~~, must also be filed with the secretary of state. The initiated amendment petition signatures must be filed with the secretary of state by the

first Tuesday in May of a general election year for the initiated amendment to qualify for submission to the voters at the next general election. The State Board of Elections shall prescribe the form of the affidavit and the petition otherwise, including petition size and petition font size for ballot measure language not prescribed in this section~~, and the affidavit must be prescribed by the State Board of Elections~~.

Section 2. That § 2-1-1.2 be AMENDED:

2-1-1.2. A petition as it is to be circulated for an initiated measure must be filed with the secretary of state, including an electronic copy of the petition, prior to circulation for signatures and at least one year before the next general election at which the initiated measure is proposed to be submitted to the voters. The petition filing must:

(1) Contain the full text of the initiated measure in fourteen-point font;

(2) Contain the date of the general election at which the initiated measure is to be submitted;

(3) Contain the title and explanation as prepared by the attorney general;

(4) Be accompanied by a notarized affidavit form signed by each person who is a petition sponsor that includes the name and address of each petition sponsor; and

(5) Be accompanied by a statement of organization as provided in § 12-27-6.

Each petition circulator shall provide to each person who signs the petition a ~~form~~ circulator handout containing the title and explanation of the initiated measure as prepared by the attorney general; any fiscal note prepared pursuant to § 2-9-30; the name, phone number, and email address of each petition sponsor; and a statement whether the petition circulator is a volunteer or paid ~~petition~~ circulator and, if a paid circulator, the amount the circulator is being paid. ~~The form must be approved by the secretary of state prior to circulation~~ The secretary of state shall approve the circulator handout for each initiated measure before the petition is circulated.~~The petition form, as prescribed by the State Board of Elections, must include the paid circulator identification number within the verification of any paid circulator.~~

For any initiated measure petition, no signature may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. A sworn affidavit, signed by at least two-thirds of the petition sponsors~~,~~ stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures~~,~~ must also be filed with the secretary of state. The initiated measure petition signatures must be filed with the secretary of state by the first Tuesday in May of a general election year for the initiated measure to qualify for submission to the voters at the next general election. The State Board of Elections shall prescribe the form of the affidavit and the petition otherwise, including petition size and petition font size for ballot measure language not prescribed in this section~~, and the affidavit must be prescribed by the State Board of Elections~~.

Section 3. That § 2-1-1.3 be AMENDED:

2-1-1.3. Terms used in this chapter mean:

(1) "Circulates," either:

(a) Physically presents or otherwise makes available a ballot measure petition to another person for that person's signature; or

(b) Solicits from another person, personally and in the presence of such other person, a signature on a ballot measure petition, while acting in concert with another person who simultaneously physically presents or otherwise makes available the ballot measure petition;

(2) "Petition circulator," ~~a person who is a resident of this state for at least thirty days prior to acting as a petition circulator, is at least eighteen years of age, and who, for pay or as a volunteer, circulates petitions for the purpose of placing ballot measures on any statewide election ballot~~ the same as the term is defined under § 12-1-3;

(3) "Petition sponsor," any person who proposes the placement of a statewide ballot measure on the ballot;

(4) "Ballot measure," any measure placed on a statewide ballot in accordance with § 2-1-1.1, 2-1-1.2, or 2-1-3.1;

(5) "Paid circulator," any person who receives money or anything of value as consideration, in whole or in part, for acting as a petition circulator;

(6) "Volunteer circulator," any person who does not receive money or anything of value as consideration, in whole or in part, for acting as a petition circulator.

Section 4. That § 2-1-3.1 be AMENDED:

2-1-3.1. The petition as it is to be circulated for a referred law ~~shall~~ must be filed with the secretary of state prior to circulation for signatures and ~~shall~~ must:

(1) Contain the title of the referred law;

(2) Contain the effective date of the referred law;

(3) Contain the date of the general election at which the referred law is to be submitted;

(4) Be accompanied by a notarized form signed by each person who is a petition sponsor that includes the names and addresses of ~~the~~ each petition ~~sponsors~~ sponsor; and

(5) Be accompanied by a statement of organization as provided in § 12-27-6.

The petition ~~shall~~ must be filed with the secretary of state within ninety days after the adjournment of the Legislature ~~which~~ that passed the referred law. A sworn affidavit, signed by at least two-thirds of the petition sponsors, stating that the documents filed constitute the entire petition and to the best of the knowledge of the sponsors contains a sufficient number of signatures ~~shall~~, must also be filed with the secretary of state. The State Board of Elections shall prescribe the form of the petition and affidavit ~~shall be prescribed by the State Board of Elections~~.

The petition circulator shall provide to each person who signs the petition a ~~form~~ circulator handout containing the title of the referred law; any fiscal note or summary of a fiscal note obtained pursuant to § 2-9-32; the name, phone number, and email address of each petition sponsor; a statement whether the petition circulator is a volunteer or paid ~~petition~~ circulator and, if a paid circulator, the amount the circulator is being paid. ~~The form shall be approved by the secretary of state prior to circulation~~ The secretary of state shall approve the circulator handout for each referred law before the petition is circulated. ~~The petition form, as prescribed by the State Board of Elections, shall include the paid circulator identification number within the verification of any paid circulator.~~

Section 5. That § 12-27-47.1 be AMENDED:

12-27-47.1. Any resident of South Dakota may report a violation of § 12-27-12, 12-27-16(1)~~, 12-27-18.2~~, or 12-27-19 to the secretary of state, who shall investigate the alleged violation and determine whether a violation occurred. In addition to any criminal penalty imposed under § 12-27-12, 12-27-16(1), or 12-27-19, the court may impose on any person, committee, or entity found in violation of § 12-27-12, 12-27-16(1) or 12-27-19 a civil penalty of five thousand dollars per violation to be deposited in the state general fund.

Section 6. That § 2-1-1.5 be REPEALED:

~~Prior to circulation of any petition for a ballot measure, a paid circulator shall submit an application to the secretary of state, obtain a circulator identification number, and be included in a directory of registered paid circulators. For each ballot measure on which a paid circulator seeks to circulate a petition, the paid circulator shall certify the circulator's name, that the circulator is at least eighteen years of age, physical address of current residence, physical address of prior residence if current residence is less than one year, email address, phone number, state of issuance for driver license or other government-issued identification, state of voter registration, the name of the petition sponsor, and whether the paid circulator is a registered sex offender. The certification under this section shall be submitted to the office of the secretary of state. If a paid circulator fails to file the registration required by this section before circulating a petition, or if the registration is incomplete, or if any statement included in the paid circulator's certification is determined to be false, any signatures collected by the paid circulator are void and may not be counted. Petition sponsors shall provide a list to the secretary of state of any person acting as a paid circulator for the sponsor's ballot measure and the rate of compensation.~~

~~An application submitted under this section may be filed by electronic transmission in accordance with methods approved by the secretary of state. To be timely filed, any application received by electronic transmission shall be legible when received by the means it was delivered.~~

~~A paid circulator and petition sponsor shall update any information required under this section with the secretary of state not more than seven days of any change.~~

Section 7. That § 2-1-1.6 be REPEALED:

~~The secretary of state shall develop and maintain a directory, available upon request and payment of reasonable fees, that contains information provided by each paid circulator under § 2-1-1.5. Providing a copy of the application submitted under § 2-1-1.5, together with any update to the information contained in the application, is sufficient to fulfill the requirements of this section. Any information contained in the directory shall be a public record for purposes of chapter 1-25.~~

Section 8. That § 2-1-1.7 be REPEALED:

~~A paid circulator who registers under § 2-1-1.5 shall pay to the secretary of state a registration fee for each ballot question committee represented by the paid circulator. The registration fee for a paid circulator is twenty dollars. The registration fee shall be deposited in the state general fund.~~

Section 9. That § 2-1-1.8 be REPEALED:

~~Following receipt of any application under § 2-1-1.5 and a registration fee~~

~~under § 2-1-1.7, if any, the secretary of state shall issue the paid circulator a circulator identification number and badge that contains the information required under § 2-1-1.9.~~

Section 10. That § 2-1-1.9 be REPEALED:

~~A person shall wear the badge issued under § 2-1-1.8 which shall be visible at all times while acting as a paid circulator. The badge shall contain the words "paid petition circulator." The badge may not state the name of the petition circulator. A person is guilty of a Class 2 misdemeanor if the person acts as a paid circulator without wearing a badge issued under § 2-1-1.8.~~

Section 11. That § 12-27-18.2 be REPEALED:

~~Any contribution to a statewide ballot question committee by a person who is not a resident of the state at the time of the contribution, a political committee that is organized outside South Dakota, or an entity that is not filed as an entity with the secretary of state for the four years preceding such contribution is prohibited. If a statewide ballot question committee accepts a contribution prohibited by this section, the secretary of state shall impose a civil penalty equal to two hundred percent of the prohibited contribution after notice and opportunity to be heard pursuant to chapter 1-26. Any civil penalty collected pursuant to this section shall be deposited into the state general fund.~~

Signed March 14, 2024

Chapter 17

(House Bill 1244)

An Act to provide a process to withdraw a signature from a petition for an initiated measure, constitutional amendment, or a referendum on a law in certain situations and to declare an emergency.

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

Section 1. That a NEW SECTION be added to chapter 2-1:

An individual who has signed a petition to initiate a constitutional amendment or measure, or to refer a law, may submit a written notification to the secretary of state stating that the individual's name be withdrawn from the petition. A signature may be withdrawn as provided in section 2 of this Act.

The written notification must include:

(1) The title of the petition;

(2) The printed name, signature, residence address, and county of registration of the individual withdrawing the individual's signature from the petition; and

(3) A statement that the individual is withdrawing the individual's signature from the petition.

The individual’s signature on the written statement must be witnessed and notarized by a notary public commissioned in South Dakota or other officer authorized to administer oaths pursuant to § 18-3-1. For a written notification to

withdraw a signature to be valid under this section, an individual must submit the written notification to the secretary of state at any time before the petition from which the individual is submitting a written notification for withdrawal under this Act is filed and certified for placement on the next general election ballot under § 2-1-17.

The written notification may be delivered by hand, or United States registered mail to the secretary of state.

Section 2. That a NEW SECTION be added to chapter 2-1:

If a challenge to a validated petition is filed pursuant to § 2-1-17.1 or 2-1-18, the secretary of state must provide to each party to the proceeding all written notifications, submitted under section 1 of this Act, that pertain to the validated petition being challenged. If a signature is withdrawn pursuant to section 1 of this Act, the signature is deemed withdrawn from the petition and may not be counted as valid in a challenge.

Section 3. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 14, 2024

Chapter 18

(House Bill 1004)

An Act to update the official code of laws.

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

Section 1. That § 2-16-13 be AMENDED:

2-16-13. The official code of laws of the State of South Dakota, which may be referred to as the code, consists of all the statutes of a general and permanent nature contained in:

(1) The 2018 revision of volume 1;

(2) The 2021 revision of volume 2;

(3) The 2021 revision of volume 2A;

(4) The 2021 revision of volume 3;

(5) The 2004 revision of volume 4;

(6) The 2004 revision of volume 5;

(7) The 2020 revision of volume 6;

(8) The 2020 revision of volume 7;

(9) The 2018 revision of volume 8;

(10) The 2018 revision of volume 9;

(11) The 2014 revision of volume 10;

(12) The 2014 revision of volume 10A;

(13) The 2014 revision of volume 11;

(14) The 2016 revision of volume 12;

(15) The 2004 revision of volume 13;

(16) The 2017 revision of volume 14;

(17) The 2016 revision of volume 15;

(18) The 2013 revision of volume 16;

(19) The 2016 revision of volume 17;

(20) The 2004 revision of volume 18;

(21) The 2011 revision of volume 19;

(22) The 2011 revision of volume 19A;

(23) The 2011 revision of volume 20;

(24) The 2013 revision of volume 21;

(25) The 2015 revision of volume 22;

(26) The 2015 revision of volume 22A;

(27) The 2022 revision of volume 23;

(28) The 2022 revision of volume 24;

(29) The 2004 revision of volume 25;

(30) The 2022 revision of volume 26;

(31) The 2007 revision of volume 27;

(32) The 2004 revision of volume 28;

(33) The 2017 revision of volume 29;

(34) The 2012 revision of volume 30;

(35) The 2012 revision of volume 31;

(36) The 2019 revision of volume 32;

(37) The 2019 revision of volume 33;

(38) The 2015 revision of volume 34;

(39) The 2004 revision of the Parallel Tables volume;

(40) The December ~~2022~~ 2023 Interim Update Service of the South Dakota Codified Laws beginning with Title 1, chapter 1-1 and ending with Title 62, chapter 62-9; and

(41) The ~~2022~~ 2023 cumulative annual pocket parts.

Section 2. That § 2-16-15 be AMENDED:

2-16-15. No provision of the code enacted by § 2-16-13, as to which any action or proceeding, civil or criminal, has been commenced prior to July 1, ~~2023~~ 2024, to determine whether or not such provision was constitutionally enacted, is validated by the enactment of this code.

The enactment of the code:

(1) Does not affect the validity of any transaction;

(2) Does not impair the curative or legalizing effect of any statute; and

(3) Does not release or extinguish any penalty, confiscation, forfeiture, or liability; which accrued, occurred, or took effect prior to the time the code took effect.

Section 3. That § 2-16-16 be AMENDED:

2-16-16. All statutes, other than this code, enacted at the ~~2023~~ 2024 session of the Legislature shall be deemed to have been enacted subsequently to the enactment of this code. If any statute repeals, amends, contravenes, or is inconsistent with the provisions of this code, the provisions of the statute shall prevail. Any enactment in the ~~2023~~ 2024 session of the Legislature that cites South Dakota Codified Laws for the purpose of amendment or repeal shall be construed as having reference to the code enacted by § 2-16-13.

Signed February 5, 2024

PUBLIC OFFICERS AND EMPLOYEES

Chapter 19

(Senate Bill 76)

An Act to modify provisions pertaining to the appointment of vacant positions on a board or commission.

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

Section 1. That a NEW SECTION be added to chapter 3-4:

If any position on a board or commission whose members are appointed by the Governor without the consent of the Senate becomes vacant pursuant to § 3-4-1, the Governor must appoint a person to fill the vacancy within one hundred twenty days of the occurrence of the vacancy. If the vacancy is the result of a resignation, the person who has resigned remains on the board or commission until the Governor appoints a person to fill the vacancy or until a date set in writing by the person who resigned, whichever is sooner.

Except as provided below, if a person's term on the board or commission has expired, the person remains on the board or commission until the Governor appoints a person to the new term, and if the Governor has not appointed a person to the new term within one hundred twenty days after the term expired, the person is deemed to be reappointed for another term. If a person is unable to serve an additional term due to a term limit, the person may not remain on the board or commission after the person's term has expired and may not be deemed reappointed under this section.

This section applies to any board or commission whose members are appointed by the Governor without the consent of the Senate unless the board or commission is specifically exempted from this section by law.

Section 2. That chapter 3-4 be amended with a NEW SECTION:

If any position on a board or commission whose members are appointed by the Governor with the consent of the Senate becomes vacant pursuant to § 3-4-1, the Governor may make an interim appointment to fill the vacancy, but any interim appointment expires when the Senate acts upon the appointee's nomination. If the vacancy is the result of a resignation, the person who has resigned remains on the board or commission until the Governor appoints a person with the consent of the Senate or makes an interim appointment to fill the vacancy or until a date set in writing by the person who resigned, whichever is sooner.

If a person's term on the board or commission has expired, the person remains on the board or commission until the Senate consents to the appointment of the Governor's nominee or until the Senate acts upon the renomination of the person whose term has expired. If the Governor does not nominate a person for the new term by the tenth legislative day after the Legislature convenes, the person whose term has expired is deemed to be renominated for the new term and the Senate may act on the nomination accordingly. If a person is unable to serve an additional term due to a term limit, the person is not deemed renominated pursuant to this section and may not remain on the board or commission pursuant to this section after the adjournment of the next legislative session after the person's term expires.

This section applies to any board or commission whose members are appointed by the Governor with the consent of the Senate unless the board or commission is specifically exempted from this section by law.

Section 3. That § 13-49-3 be AMENDED:

13-49-3. Each regent~~, except the student regent, shall be~~ is appointed for a term of six years. The term ~~shall expire~~ expires on the last day of March ~~or when a successor is appointed and qualified~~, unless removed as provided in § 3-17-1. No regent appointed after July 1, 2018, and without any previous service on the board, may serve more than two consecutive terms. ~~However, after serving two consecutive terms, a~~ A regent who has served two consecutive terms may be reappointed ~~after~~ if at least two years have passed since the expiration of the regent's last term. Any partial term to fill a vacancy on the board may not count against the two-term limit. This section does not apply to the student regent.

Section 4. That § 13-49-6.1 be AMENDED:

13-49-6.1. The Governor shall appoint a student regent, with the consent of the Senate, who shall participate in all board meetings, open and closed, and be compensated in the same manner as board members. The student regent ~~shall~~ must be a student of one of the public postsecondary educational institutions under the control of the board. The student regent ~~shall be~~ is appointed for a term of two years ~~which term shall expire~~. The term of the student regent expires on the first day of July of every even-numbered year, unless the student regent is removed under the provisions of § 3-17-1 or ~~unless such~~ the student does not remain enrolled in a postsecondary institution controlled by the board. The student regent is a formal member of the board and may vote.

If the term of the student regent expires, the Governor may make an interim appointment for the new term. If the position of student regent becomes vacant pursuant to § 3-4-1, the Governor may make an interim appointment for the balance of the unexpired term. Any interim appointment expires when the Senate acts upon the appointment unless the Senate consents to the appointment.

The student regent is exempt from the provisions of section 2 of this Act.

Section 5. That § 1-7-1.1 be REPEALED.

~~On any board or commission whose members are appointed by the Governor, the Governor shall appoint a person to fill any vacancy within one hundred twenty days of the occurrence of the vacancy. The person who has resigned or whose term has expired shall remain on the board or commission until the Governor appoints a person to fill the vacancy. For any person whose term on the board or commission has expired, if the Governor has not appointed a person to fill the vacancy within one hundred twenty days after the vacancy occurs, the person shall be deemed to be reappointed for another term.~~

Section 6. That § 13-49-4 be REPEALED.

~~If a vacancy occurs as provided in § 3-4-1, the Governor shall fill the vacancy by appointment, and the appointee shall serve for the balance of the unexpired term. However, if the Senate, at the next legislative session, fails to confirm the appointee, the appointee shall only serve until the last day of March. Then a new appointee shall be named by the Governor. The subsequent appointee is subject to the same conditions as set forth in this section.~~

Signed March 4, 2024

Chapter 20
(House Bill 1060)

An Act to revise certain provisions related to travel reimbursement.

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

Section 1. That § 3-9-1 be AMENDED:

3-9-1. ~~On or before the first of July each year, the State Board of Finance may promulgate rules, pursuant to chapter 1-26, to fix a rate per mile which shall be paid to those operating privately owned automobiles and vehicles on state business. Any person using a privately owned automobile or motorcycle shall be reimbursed at the same rate per mile.~~ In lieu of actual transportation expenses and except as provided in section 2 of this Act, the mileage reimbursement rate for using a privately owned motor vehicle on state business is fifty-one cents per mile or the standard mileage rate for business authorized by the United States Internal Revenue Service as of October first each year, whichever is greater. However, if no state vehicle is equipped for the transportation of a person with special needs, ~~a different rate per mile may be established. The rate may be changed during a fiscal year with the prior approval of the Legislative Interim Appropriations Committee.~~ the mileage reimbursement rate for using a privately owned motor vehicle is based on the type of vehicle. If a privately owned passenger or cargo van, pickup truck, or sport utility vehicle is used to transport an individual with special needs for state business, the mileage reimbursement rate is sixty-eight cents per mile or one-hundred-and-thirty percent of the standard mileage rate for business authorized by the United States Internal Revenue Service as of October first each year, whichever is greater. If any other vehicle is used to transport an individual with special needs for state business, the mileage reimbursement rate is fifty-one cents per mile or the standard mileage rate for business authorized by the United States Internal Revenue Service as of October first each year, whichever is greater. For the purposes of this section, the term "individual with special needs" means a person with a disability that makes the

person unable to operate an unmodified motor vehicle but allows the person to operate a personal motor vehicle modified to accommodate the disability.

The mileage reimbursement rate covers all expenses incidental to the operation of a motor vehicle.

The Bureau of Finance and Management shall publish in writing the mileage reimbursement rate to be effective as of October first each year. The state auditor shall issue warrants ~~covering vehicle expenses~~ for using a privately owned motor vehicle on state business at the rate specified ~~by the State Board of Finance~~ upon the sworn statement of the party using the vehicle.

Section 2. That a NEW SECTION be added to chapter 3-9:

If an Office of Fleet and Travel Management or Department of Transportation pool motor vehicle is available within ten miles of a person's place of residence or headquarters station but the person uses a privately owned vehicle instead for state business, the mileage reimbursement rate is forty-five percent of the standard mileage rate for business authorized by the United States Internal Revenue Service as of October first each year.

The Office of Fleet and Travel Management must approve mileage reimbursement paid at the rate set pursuant to § 3-9-1 if there are Office of Fleet and Travel Management or Department of Transportation pool motor vehicles available within ten miles of a person's place of residence or headquarters station.

This section does not apply to elected officers, departmental secretaries, and chairs of state boards and commissions.

Section 3. That a NEW SECTION be added to chapter 3-9:

Upon written request of the head of a state agency or institution, the state auditor may reimburse a person using a motor vehicle on state business for mileage within a designated city area if the required travel is not compensated through the person's salary. For the purposes of this section, the term "designated city area" means an area extending five miles beyond the municipal boundaries of Pierre, Sioux Falls, Aberdeen, Watertown, Brookings, and Rapid City.

Section 4. That § 3-9-2 be AMENDED:

3-9-2. The State Board of Finance may fix the maximum amount ~~which~~ that may be allowed per day or fraction of a day as reimbursement for ~~expenses for meals and lodging necessarily~~ meal and lodging expenses necessarily incurred by state officers and employees in the performance of their duties while away from their places of residence or headquarters station, and change the maximum allowance as the board deems just and proper under existing conditions. The State Board of Finance may authorize reimbursement on a per diem basis, in lieu of the method described in this section or any other method provided by law, and fix the amount per day or fraction of a day ~~which~~ that may be allowed, and may change the amount as the board deems just and proper under existing conditions.

The maximum amount allowed as reimbursement for the actual cost of in-state lodging incurred by state officers and employees in the performance of their duties while away from their places of residence or headquarters station is seventy-five dollars per night, plus taxes and mandatory fees, or the rate established by the United States General Services Administration for the primary destination as of October first each year, plus taxes and mandatory fees, whichever is greater. The Bureau of Finance and Management shall publish in writing the maximum reimbursement rate for in-state lodging to be effective as of October first each year.

The chair of a commission or council created by chapters 38-10, 38-27, 38-29, and 38-32 may authorize an employee to be reimbursed for actual costs of lodging and meals, excluding alcoholic beverage as defined in ~~subdivision 35-1-1(1)~~ § 35-1-1 if:

(1) The lodging and meals are in furtherance of the state's interests, concerns, and activities;

(2) The activities for which the lodging and meals are required fall within the scope of the commission's or council's responsibilities; and

(3) The employee is performing official duties related to trade servicing or promotional activities.

The authorization ~~shall~~ must be made on a form prescribed by the Governor and supported by receipts and ~~shall~~ must accompany the claim filed pursuant to § 3-9-8. The provisions of this section, §§ 3-9-2.1 and 3-9-2.2, and the amounts fixed by the State Board of Finance ~~shall~~ prevail notwithstanding the provisions of other statutes~~, such as provision that a state officer or employee shall be paid or reimbursed for his actual and necessary traveling expenses~~.

Upon the written request of a department or office head, the State Board of Finance may, through a majority vote of its membership, grant relief from the per diem allowances for any officer or employee who would otherwise suffer hardship from the limitations of this section or the board's rules while furthering the state's interests, concerns, and activities.

Section 5. That a NEW SECTION be added to chapter 3-9:

Notwithstanding §§ 3-9-2 to 3-9-2.2, inclusive, the daily meal allowance of uniformed highway patrol officers when assigned to field duties is seventeen dollars per day.

Section 6. That § 2-4-2 be AMENDED:

2-4-2. The salary of each member of the Legislature is equal to one-fifth of the South Dakota median household income reported by the United States Census Current Population Survey, as ascertained and adjusted each year by the State Board of Finance to take effect on the first day of January of each year for every regular legislative session. In addition, each legislator shall receive:

(1) Reimbursement to be paid after the legislative session for actual mileage or its equivalent traveled to and from home not more than once each weekend or between days of recess during the regular legislative session, at ~~state rates established by the Board of Finance;~~ the rate set pursuant to § 3-9-1;

(2) Expenses of one hundred twenty-three dollars per day for each day of a regular or special legislative session as prepaid reimbursement for living expenses, including meals and lodging, laundry, cleaning and pressing of clothing, and all other uncompensated expenses as defined in § 2-4-2.1 incident to the performance of legislative services, or at the amount fixed for the per diem allowance that is authorized by the United States Internal Revenue Service to be excluded from the gross income without itemization as of October first each year, whichever of the two is greater; and

(3) Five cents once each session for every mile of necessary travel in going to and returning from the place of meeting of the Legislature by the most usual route.

For each day's attendance at special sessions, each member, in addition to mileage and expenses, shall receive a per diem calculated by the director of the Legislative Research Council equal to the normal daily compensation for the regular session immediately preceding the special session.

Section 7. That § 7-12-18 be AMENDED:

7-12-18. The sheriff shall charge and remit the following:

(1) For serving an order of arrest with commitment or bail bond and return, twenty-five dollars;

(2) For serving summons, complaint, warrant of attachment, affidavit, notice and undertaking in claim and delivery, or injunction, order to show cause, citation, or other process, and return of the instrument, fifty dollars for all such process or instruments served at the same time upon the same person regardless of the capacities in which such person is served. However, for all such process or instruments served upon another such person at approximately the same time at the same place, ten dollars;

(3) For serving subpoena for witness, each person, twenty dollars;

(4) For traveling expenses in a motor vehicle, a mileage allowance of eight cents above the rate set ~~for state employees by the State Board of Finance~~ pursuant to § 3-9-1 for each mile actually and necessarily traveled by motor vehicle. For traveling expenses in a private plane, a mileage allowance of ten cents above the rate set ~~for state employees by the State Board of Finance~~ pursuant to § 3-9-1 for each mile actually and necessarily traveled by private plane. However, actual cost may be paid for travel by train, bus, plane, or other commercial vehicle;

(5) For serving writ of execution and return of the instrument, whether satisfied or unsatisfied, ninety-five dollars;

(6) For levying writ of possession, fifty dollars. However, if the sale of the property levied upon is not subsequently held, the actual costs or expenses associated with levying writ of possession shall be paid;

(7) For advertisement of sale in newspaper, in addition to printing, twenty-five dollars;

(8) For posting notices of sale of real property, twenty-five dollars, and mileage;

(9) For executing writ or order of partition, twenty-five dollars;

(10) For making deed for land sold on execution or order of sale, one hundred dollars except no fee is charged when the deed only requires the sheriff's signature;

(11) In addition to the applicable fees and expenses, a commission of six percent on all money received and disbursed by the sheriff on execution or order of sale, order of attachment, decree or on sale of real property or personal property. However, in no case may the commission be less than fifty dollars or more than three thousand five hundred dollars. If the execution or order of sale is a foreclosure of a real estate mortgage, the commission may not be more than one thousand five hundred dollars. The commissions shall be included as a part of the cost of execution, order of sale, order of attachment, decree, or on sale of real or personal property, which shall be paid by the debtor out of the proceeds. However, in each

case of redemption prior to the sale, the sheriff is entitled to the commission as stated above, to be paid by the redemptioner as a cost of the redemption;

(12) For a case in the circuit court, if a person, in whose favor an execution or order of sale is issued, bids on the property sold on execution or decree, the sheriff or officer making the sale shall receive the following compensation: if the amount for which the property is bid on is one thousand dollars or less, the sum of forty dollars; and if the amount for which the property is bid on is more than one thousand dollars, the sum of one hundred dollars;

(13) For making a sale of real property under a foreclosure of mortgage by advertisement, the same fees as for the sale of real property under a judgment of foreclosure and sale of real property; and

(14) If personal property is taken by the sheriff on execution or warrant of attachment and applied in the satisfaction of the debt without sale, the same percentage on the appraised value of the property as in the case of a sale and all additional reasonable and necessary costs and expenses incurred in executing the duties of sheriff including expenses associated with the removal of property from the premises.

No fee may be charged in any action under § 25-10-3, 25-10-6, 22-19A-8, or 22-19A-12.

The fees established pursuant to this section shall be used for law enforcement purposes.

Section 8. That § 8-4-8 be AMENDED:

8-4-8. Except as otherwise provided in this section and § 1-27-35, the clerk, treasurer, and supervisors may each receive an annual salary, plus compensation for each day necessarily devoted to the discharge of their official duties when attending to business in the township. The voters of each township shall establish the annual salary and the hourly or daily rate of compensation at the annual township meeting. In addition, the clerk, treasurer, and supervisors may also receive mileage compensation at the rate ~~established for state employees by the State Board of Finance when attending to the business of the township.~~ set pursuant to § 3-9-1 when attending to the business of the township. The township board of supervisors shall limit the total amount of salary and compensation that the clerk, treasurer, and any one supervisor may receive in a year. Any salary and compensation limit established by the township board of supervisors does not apply to compensation received for road work.

Section 9. That § 12-21-4.1 be AMENDED:

12-21-4.1. The members of the recount board shall receive mileage for the miles traveled each day of the recount from their points of residence ~~in an amount equal to that set by the State Board of Finance for state employees;~~ at the rate set pursuant to § 3-9-1; ~~provided~~ however, ~~that~~ this provision shall not apply to the first ten miles traveled each day.

Section 10. That § 13-8-38 be AMENDED:

13-8-38. In addition to per diem as provided in § 13-8-37, all school board members may receive ~~the travel allowance authorized by the rules adopted by the State Board of Finance.~~ mileage at the rate set pursuant to § 3-9-1.

Section 11. That § 23-7-67 be AMENDED:

23-7-67. It is a Class 1 misdemeanor for a person to fail or refuse to surrender to the county sheriff of the person's county of residence, upon lawful demand, a gold card or enhanced permit to carry a concealed pistol that has been revoked. If a person fails to return a gold card or enhanced permit to the sheriff of the person's county of residence after lawful demand, the sheriff shall direct a law enforcement officer to secure its possession and return in compliance with § 23-7-64. The law enforcement officer shall receive ten dollars and fifty cents plus mileage~~, at a rate established by the State Board of Finance,~~ at the rate set pursuant to § 3-9-1 to be paid by the violator. Failure to pay the fee and mileage is a Class 2 misdemeanor.

Section 12. That § 27A-7-8 be AMENDED:

27A-7-8. The members of the board of mental illness, other than a magistrate judge, shall be allowed compensation at an hourly rate as determined by the county commissioners for all time ~~actually~~ employed in the duties of their offices as members of such board of mental illness. All members of the board shall be allowed mileage at the rate ~~determined by the board of finance~~ set pursuant to § 3-9-1 and other necessary actual expenses incurred in the performance of their duties as members of such board.

Section 13. That § 32-12-68 be AMENDED:

32-12-68. It is a Class 1 misdemeanor for a person to fail or refuse to surrender to the Department of Public Safety upon its lawful demand a driver license that has been suspended, revoked, or canceled. If a person fails to return the license to the secretary of the Department of Public Safety after lawful demand, the secretary may direct any law enforcement officer to secure its possession and return it to the secretary. The law enforcement officer shall receive ten dollars and fifty cents plus mileage~~, at a rate established by the State Board of Finance,~~ at the rate set pursuant to § 3-9-1 to be paid by the person from whom the license was obtained to be collected when the person submits an application for a license. Failure to pay the fee and mileage is a Class 2 misdemeanor.

Section 14. That § 34A-5-23 be AMENDED:

34A-5-23. Each sanitary district board of trustees shall establish amounts to reimburse board members for expenses for lodging, meals, and mileage and to provide compensation for each day of actual service for traveling to, attending, and returning from meetings, hearings, or investigations of the sanitary district board. ~~Such reimbursement and compensation shall be paid on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.~~ Such reimbursement and compensation shall be paid at the rates set pursuant to chapter 3-9.

Section 15. That § 34A-16-8 be AMENDED:

34A-16-8. Each commissioner shall receive travel and subsistence expense ~~in accordance with the rules established by the State Board of Finance.~~ at the rates set pursuant to chapter 3-9. In addition, per diem at rates established by the Board of Finance shall be paid each member for each day of actual service for traveling to, attending, and returning from meetings, hearings, or investigations of the board of commissioners. ~~Travel, subsistence, and per diem shall be paid on vouchers duly verified and approved according to the rules determined by the Board of Finance.~~

Section 16. That § 38-19-50 be AMENDED:

38-19-50. The Nutrient Research and Education Council is hereby established. The council shall consist of nine voting members, including three representing the fertilizer industry, two representing grower organizations, one representing the state's largest commodity organization, one representing the specialty fertilizer industry, one representing the certified agronomy association, and one farmer member of the State Conservation Commission. The council shall also include five nonvoting members: two representing environmental organizations, one representing the director of the South Dakota Agricultural Experiment Station, and two representing the secretary of the Department of Agriculture and Natural Resources. The certified agronomy association and any association or organization representing the fertilizer industry, growers, and the environment may submit nominations to the secretary of agriculture and natural resources for their respective members. The secretary shall select from these nominations the members of the council. Members of the council may receive no compensation, but members may be reimbursed for travel and subsistence expense ~~in accordance with rules promulgated by the State Board of Finance.~~ at the rates set pursuant to chapter 3-9. The council shall meet at least twice each year. The council shall be provided with staff assistance from the South Dakota Agricultural Experiment Station. The council retains the respective quasi-judicial, quasi-legislative, advisory, other nonadministrative and special budgetary functions as defined in § 1-32-1 otherwise vested in the council. The council shall exercise those functions independently of the South Dakota Agricultural Experiment Station.

Section 17. That § 40-18-16 be AMENDED:

40-18-16. The board may promulgate rules, pursuant to chapter 1-26, to:

(1) Describe prohibited brand symbols for various types of livestock and identify locations on animals where a brand is permitted;

(2) Provide for the registration, transfer, and renewal of livestock brands;

(3) Establish a brand registration fee not to exceed fifty dollars;

(4) Establish a brand renewal fee not to exceed eighteen dollars per year or a brand renewal fee not to exceed ninety dollars for each five-year ownership period and a brand transfer fee not to exceed fifty dollars;

(5) Establish an ownership inspection fee not to exceed one dollar for each head of livestock;

(6) Establish recordable livestock brands;

(7) Establish law enforcement, ownership inspection, and transportation requirements within or without the ownership inspection area;

(8) Establish a duplicate certificate fee not to exceed twenty dollars;

(9) Establish a mileage fee for inspectors not to exceed the rate set ~~by the State Board of Finance;~~ pursuant to § 3-9-1.

(10) Establish an inspection fee for livestock located outside the ownership inspection area not to exceed one dollar for each head of livestock; and

(11) Establish a brand registration application fee not to exceed fifty dollars.

Section 18. That § 40-20-40 be AMENDED:

40-20-40. The board may charge a fee for actual mileage traveled to

perform a local inspection or an inspection at an open market. The mileage fee shall be in addition to the inspection fee and may not exceed the rate set ~~by the State Board of Finance~~ pursuant to § 3-9-1.

Section 19. That § 46A-4-47 be AMENDED:

46A-4-47. For the time actually and necessarily employed in the duties of their office and in attending and returning from the sessions of the board of directors, the district directors may receive travel and subsistence expense ~~in accordance with the rules promulgated by the State Board of Finance.~~ at the rates set pursuant to chapter 3-9. In addition, per diem, not to exceed the Board of Water and Natural Resources' per diem, may be paid each member for each day of actual service for attending meetings, hearings, or investigations of the irrigation district board. ~~Travel, subsistence, and per diem shall be paid out of the district general fund on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.~~

Section 20. That § 46A-14-42 be AMENDED:

46A-14-42. Any member of a watershed district board may receive travel and subsistence expense ~~in accordance with the rules promulgated by the State Board of Finance.~~ at the rates set pursuant to chapter 3-9. In addition, per diem, not to exceed sixty dollars per day, may be paid each member for each day of actual service for attending meetings, hearings, or investigations of the watershed district board. ~~Travel, subsistence, and per diem shall be paid on vouchers duly verified and approved according to the rules promulgated by the Board of Finance.~~

Signed March 14, 2024

Chapter 21

(Senate Bill 68)

An Act to amend certain provisions pertaining to the South Dakota Retirement System to comply with federal law.

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

Section 1. That § 3-12C-113 be AMENDED:

3-12C-113. For the purposes of this chapter, the term, Internal Revenue Code, or code, means the Internal Revenue Code as in effect as of January 1, ~~2023~~ 2024.

Section 2. That § 3-12C-1901 be AMENDED:

3-12C-1901. The system shall pay all benefits in accordance with a good faith interpretation of the requirements in § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of section 414(d) of the Internal Revenue Code.

The member's entire interest ~~shall~~ must be distributed, or begin to be distributed, by the required beginning date, which is April first of the calendar year following the later of:

(1) The calendar year in which the member reaches ~~age seventy-two, or age seventy and one-half if the member attained age seventy and one-half before January 1, 2020~~ the applicable age, which is determined as follows:

(a) If the member was born before July 1, 1949, the applicable age is seventy and one-half;

(b) If the member attained age seventy-two before January 1, 2023, the applicable age is seventy-two;

(c) If the member attains age seventy-two after December 31, 2022, the applicable age is seventy-three; or

(d) Effective January 1, 2033, applicable age shall have the meaning set forth in § 401(a)(9)(C)(v) of the Internal Revenue Code; or

(2) The calendar year in which the member retires and separates from service with the member's employer.

A member or beneficiary eligible for benefits ~~shall~~ must apply for benefits in order to commence distribution of benefits. The system, pursuant to a qualified domestic relations order, may establish separate benefits for a member and alternate payee.

Section 3. That § 3-13-58 be AMENDED:

3-13-58. The system shall pay all benefits in accordance with a good faith interpretation of the requirements in § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code.

The participant's entire interest ~~shall~~ must be distributed, or begin to be distributed, by the required beginning date, which is April first of the calendar year following the later of:

(1) The calendar year in which the participant reaches ~~age seventy-two, or age seventy and one-half if the participant attained age seventy and one-half before January 1, 2020~~ the applicable age, which is determined as follows:

(a) If the member was born before July 1, 1949, the applicable age is seventy and one-half;

(b) If the member attained age seventy-two before January 1, 2023, the applicable age is seventy-two;

(c) If the member attains age seventy-two after December 31, 2022, the applicable age is seventy-three; or

(d) Effective January 1, 2033, applicable age shall have the meaning set forth in § 401(a)(9)(C)(v) of the Internal Revenue Code; or

(2) The calendar year in which the participant retires and separates from service with the member's employer.

A participant or beneficiary eligible for benefits ~~shall~~ must apply for benefits in order to commence distribution of benefits. The system, pursuant to a qualified domestic relations order, may establish separate benefits for a participant and alternate payee.

Section 4. That § 3-13A-23.1 be AMENDED:

3-13A-23.1. The system shall pay all benefits in accordance with a good

faith interpretation of the requirements in § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code.

The participant's entire interest ~~shall~~ must be distributed, or begin to be distributed, by the required beginning date, which is April first of the calendar year following the later of:

(1) The calendar year in which the participant reaches ~~age seventy-two, or age seventy and one-half if the participant attained age seventy and one-half before January 1, 2020~~ the applicable age, which is determined as follows:

(a) If the member was born before July 1, 1949, the applicable age is seventy and one-half;

(b) If the member attained age seventy-two before January 1, 2023, the applicable age is seventy-two;

(c) If the member attains age seventy-two after December 31, 2022, the applicable age is seventy-three; or

(d) Effective January 1, 2033, applicable age shall have the meaning set forth in § 401(a)(9)(C)(v) of the Internal Revenue Code; or

(2) The calendar year in which the participant retires and separates from service with the member's employer.

A participant or beneficiary eligible for benefits must apply for benefits in order to commence distribution of benefits. The system, pursuant to a qualified domestic relations order, may establish separate benefits for a participant and alternate payee.

Section 5. That § 3-13C-13 be AMENDED:

3-13C-13. The system shall pay all benefits in accordance with a good faith interpretation of the requirements in § 401(a)(9) of the Internal Revenue Code and the regulations in effect under that section, as applicable to a governmental plan within the meaning of § 414(d) of the Internal Revenue Code.

The member's entire interest ~~shall~~ must be distributed, or begin to be distributed, by the required beginning date, which is April first of the calendar year following the later of:

(1) The calendar year in which the member reaches ~~age seventy-two, or age seventy and one-half if the member attained age seventy and one-half before January 1, 2020~~ the applicable age, which is determined as follows:

(a) If the member was born before July 1, 1949, the applicable age is seventy and one-half;

(b) If the member attained age seventy-two before January 1, 2023, the applicable age is seventy-two;

(c) If the member attains age seventy-two after December 31, 2022, the applicable age is seventy-three; or

(d) Effective January 1, 2033, applicable age shall have the meaning set forth in § 401(a)(9)(C)(v) of the Internal Revenue Code; or

(2) The calendar year in which the member retires and separates from service with the member's employer.

A member or beneficiary eligible for benefits ~~shall~~ must apply for benefits

in order to commence distribution of benefits. The system, pursuant to a qualified domestic relations order, may establish separate benefits for a member and alternate payee.

Signed February 20, 2024

Chapter 22

(Senate Bill 69)

An Act to amend certain provisions pertaining to the South Dakota Retirement System.

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

Section 1. That § 3-12C-814 be AMENDED:

3-12C-814. No application for disability benefits pursuant to § 3-12C-812 may be determined until the member's employer has ~~certified to the system that, within the employer's understanding of the member's medical condition and the employer's knowledge of the member's employment requirements and duties, the employer is unable to provide to the member either effective accommodations in the member's current position or employment in a comparable level position~~ submitted a completed form and supporting documentation that provides the member's position, usual duties of the position, any modifications or accommodations provided, and the member's employment history with the employer.

Section 2. That § 3-12C-815 be AMENDED:

3-12C-815. No application for disability benefits pursuant to § 3-12C-812 may be determined until a health care provider has ~~certified to the system that the employee has a disability~~ completed a form providing an evaluation of the member's diagnosis, complicating conditions, including limitations or restrictions, and the member's ability to perform the duties required by the member's employment. If no form is provided by a health care provider, the member must submit other medical documentation of the diagnosis, complicating conditions, including limitations or restrictions, and the member's ability to perform usual duties required by the member's employment.

Section 3. That § 3-12C-1208 be AMENDED:

3-12C-1208. No retirement benefit may be paid unless the system has received a completed application for a retirement benefit, including the benefit option elected. The application ~~shall~~ must be signed by the generational member, and the member shall provide a copy of the member's current driver license or other picture identification card issued by a government agency or tribe. If the member is married, the spouse ~~shall~~ must sign the application and provide a copy of the spouse's current driver license or other picture identification card issued by a government agency or tribe.

A member who is married is not required to obtain the signature of the member's spouse if the member submits a completed form, in which the member certifies, under the penalty of perjury, that the member is unable to obtain the signature of the member's spouse because either:

(1) The member does not know where the member's spouse is and has made a good faith effort to locate the spouse; or

(2) Exceptional circumstances make it inappropriate for the member to obtain the signature of the member's spouse.

If the member is unable to obtain the signature of the member's spouse for either reason, the member must elect the sixty percent joint and survivor benefit pursuant to § 3-12C-1209 and provide documentation to support the assertion of subdivision (1) or (2) of this section.

Signed February 20, 2024

PUBLIC PROPERTY, PURCHASES AND CONTRACTS

Chapter 23

(House Bill 1011)

An Act to revise the membership of the South Dakota Capitol Complex Restoration and Beautification Commission.

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

Section 1. That § 5-15-2 be AMENDED:

5-15-2. The commission consists of ~~one nonappointed member, who shall be~~ the mayor of Pierre or the mayor's designee, one member of the House of Representatives appointed by the speaker of the House of Representatives, one member of the Senate appointed by the president pro tempore of the Senate, and seven ~~appointed~~ members~~, not all of whom may be of the same political party, to be~~ appointed by the Governor ~~for a term of four years~~. The member appointed by the speaker of the House of Representatives and the member appointed by the president pro tempore of the Senate are appointed for a term of two years. The members appointed by the Governor are appointed for a term of four years and may not all be of the same political party. Any member appointed to fill a vacancy arising from other than the natural expiration of a term shall serve for only the unexpired portion of the term.

Signed February 5, 2024

LOCAL GOVERNMENT GENERALLY

Chapter 24
(House Bill 1055)

An Act to raise the appraisal value of surplus property that may be sold by a political subdivision without notice.

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

Section 1. That § 6-13-4 be AMENDED:

6-13-4. Any surplus property appraised pursuant to § 6-13-2 at two thousand five hundred dollars or less or any animal owned by a municipality for a zoo may be sold by the governing board at a private or public sale without notice. The governing board of the political subdivision shall give notice of the sale of all other surplus property~~, including property created as a result of an educational program in a school,~~ by publishing a notice of the sale at least twice, with the first publication not less than ten days prior to the date of the sale. The first publication ~~shall~~ must be in the official newspapers of the political subdivision and the second publication may be in any legal newspaper of the state chosen by the governing board of the political subdivision. If the political subdivision has no official newspaper, the first publication ~~shall~~ must be made in a legal newspaper with general circulation in the area, to be selected by the governing board of the political subdivision. The notice shall describe the property to be sold and the time when bids will be opened. The governing board may open the bids or may designate an official and a witness to open all bids prior to the meeting of the governing board and shall state such in the notice of sale. Property to be transferred to another political subdivision pursuant to § 6-5-1 need not be advertised.

Signed February 5, 2024

Chapter 25
(House Bill 1100)

An Act to modify certain requirements for eligibility to receive a gift of a museum collection from a county or municipality.

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

Section 1. That § 6-13-15 be AMENDED:

6-13-15. Notwithstanding any other provision of law, any county or municipality may provide as a gift to any nonprofit organization that meets the requirements of this section and that is recognized as an exempt organization under § 501(c)3 of the Internal Revenue Code of 1986, as amended to January 1, 1996, any collection of historical artifacts, documents, or other materials that has been housed in a museum or other display owned by the county or municipality. The gift may include collection display and storage fixtures and related tangible personal property. To be eligible to receive the collection the nonprofit organization

shall agree to:

(1) Display or store the collection within the State of South Dakota;

(2) Not dispose of the collection except to return the collection to the county or municipality or in accordance with mutually agreed upon collections management policies; and

(3) Return all of the nonprofit organization's assets acquired under this section to the county or municipality upon dissolution of the nonprofit organization.

A gift of a collection of specimens preserved by a taxidermist is exempt from the requirements of subdivisions (1), (2), and (3) of this section.

Signed March 4, 2024

COUNTIES

Chapter 26

(Senate Bill 199)

An Act to revise provisions pertaining to the consolidation or boundary changes of counties.

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

Section 1. That § 7-2-1 be AMENDED:

7-2-1. ~~If fifteen~~A petition signed by fifteen percent of the registered voters of each of two or more adjoining counties of this state, based upon the total number of registered voters at the last preceding general election, ~~of each of two or more adjoining counties of this state, petition~~ requesting the formation of a committee to study the question of changing the boundary lines or of the consolidation of the petitioners' counties, pursuant to this chapter, must be filed with the county auditor of each affected county and presented to the board of county commissioners of their respective counties ~~for an election to determine the question of changing the boundary lines or of the consolidation of two or more counties, stating in such petition the names of the counties to be consolidated or boundary lines to be changed, such boards of county commissioners shall at their regular July meeting succeeding the presentation of such petitions provide that the question of consolidation of the counties or the changing of the boundary lines of such counties shall be submitted to a vote at the next general election succeeding the presentation of such petitions~~ at the regular July meeting.

Each county auditor shall, within thirty days of receiving the petition, verify that the signatures on the petition are from registered voters of the county. A signature on a petition is invalid if signed more than six months before the date the petition is filed. If the auditor verifies that the petition meets the requirements of this section, the boards of county commissioners must appoint a study committee.

The ~~petitions shall~~ petition must be filed with the county auditors of ~~such~~ the counties prior to the first day of the regular July meeting of the board of county

commissioners and must state the names of the counties to be consolidated or describe the boundary lines to be changed.

The auditor of each county where ~~any such~~ a petition ~~has been~~ is filed shall transmit ~~to the auditor of the other county or counties affected thereby~~ a certified copy ~~or copies~~ of the petition ~~or petitions~~ filed in ~~his~~ that county to the auditor of each of any other affected county.

Section 2. That chapter 7-2 be amended with a NEW SECTION:

The board of county commissioners in each of two or more adjoining counties may, on the boards' own initiative, create a committee to study changing the boundary lines or the consolidation of two or more counties by a resolution passed by a majority vote of each of the participating boards of county commissioners.

Section 3. That chapter 7-2 be amended with a NEW SECTION:

The composition of the study committee organized under § 7-2-1 or section 2 of this Act must be prescribed in the petition or resolution, but the study committee must include two members of the board of county commissioners from each affected county and at least one resident from each incorporated first or second class municipality in each of the participating counties. If a vacancy on the study committee occurs, the board of county commissioners of the county represented by the person vacating the position must fill the vacancy. The study committee shall elect a chairman and a secretary from among the study committee's voting members. A majority of the study committee constitutes a quorum and a majority of a quorum may act on all matters that pertain to the study committee.

The study committee may employ and fix the compensation and duties of necessary staff; contract and cooperate with other individuals and public or private agencies considered necessary for assistance; and hold public hearings and community forums and use other suitable means to disseminate information, receive suggestions and comments, and encourage public discussion of the study committee's purpose, progress, conclusions, and recommendations.

The study committee may not expend more than an amount equal to two-fifths of the South Dakota median household income reported by the United States Census Current Population Survey, as ascertained and adjusted each year by the State Board of Finance to take effect on January first of each year, without the consent of the boards of county commissioners of each of the affected counties.

The county shall reimburse each member for any necessary expenses incurred by that member in performing the duties of a member of the study committee but members may not receive a salary or other compensation for services performed.

Section 4. That chapter 7-2 be amended with a NEW SECTION:

The study committee must submit a final report to the board of county commissioners of each affected county within one hundred and eighty days after the study committee is created. The study committee shall consider and include in the report:

(1) The fiscal impact of the proposed boundary change or county consolidation and the economic viability of the proposed county or the counties after the proposed boundary change;

(2) The comparative costs of providing services in the affected counties and

the proposed consolidated county or the counties after the proposed boundary change;

(3) The projected revenues available to the affected counties and the proposed county or the counties after the proposed boundary change;

(4) The final boundaries of the proposed county or the proposed boundary change, including a map of those boundaries;

(5) The location of the county seat for the new county;

(6) The name of the new county;

(7) The procedure for the orderly and timely transfer of service functions and responsibilities after the consolidation or boundary change;

(8) The plan and procedure for equalizing the assets of the affected counties, and the procedure for negotiating and resolving any subsequent disagreement regarding the equalization of assets;

(9) The plan and procedure for repaying the debts of the current counties;

(10) The estimated taxes, assessments, or other authorized charges necessary to meet the liabilities in the first full fiscal year after the consolidation or boundary change;

(11) The structure or form of county government for the proposed county, and the selection, powers, duties, functions, qualifications and training, terms, and compensation of officers; and

(12) The application of the plan, if any, to each school district or other special taxing district withing the affected counties.

The report must be made available to any interested person.

Section 5. That chapter 7-2 be amended with a NEW SECTION:

When the report and the map have been received by the board of county commissioners for each of the affected counties, each board must, at their regular July meeting following the presentation of the report, provide that the study committee's county consolidation plan be submitted to a vote at the next general election following the presentation of the report.

Section 6. That § 7-2-2 be AMENDED:

7-2-2. The auditor of each of ~~such~~ the affected counties shall give thirty days' notice of ~~such~~ the election by ~~publication and~~ publishing the notice once each week for at least two consecutive weeks prior to the election in the official newspapers of the county. The notice must provide the election date, the hours when the polls are opened, and the question to be voted upon. The county auditor shall prepare official ballots ~~therefor~~ according to the provisions of this chapter and this code relating to elections and the submission of questions to the voters. The laws governing the holding of general elections in this state ~~shall~~ govern the holding of such election so far as applicable.

Section 7. That § 7-2-3 be AMENDED:

7-2-3. If at any election held under the provisions of this chapter, a majority of all the votes cast at ~~such~~ the election in each of ~~such~~ the affected counties ~~shall be~~ are in favor of consolidation of two or more counties or the changing of the boundary lines of ~~such~~ named counties, they ~~shall~~ must be declared consolidated or changed as ~~hereinafter~~ ~~provided~~ per the ballot question and this chapter.

Section 8. That § 7-2-4 be AMENDED:

7-2-4. ~~After~~Within thirty days after the canvassing of the returns of ~~such~~ the election ~~it shall be the duty of~~ , the county auditor of each of ~~such~~ the affected counties ~~to~~ shall transmit ~~within thirty days~~ a certified report of ~~such~~ the canvass to the Governor who shall, within twenty days after ~~the receipt of such~~ receiving the report of the canvass, proclaim the result of ~~such~~ the election and officially notify the county auditor of the respective counties of ~~such~~ the proclamation.

Section 9. That § 7-2-5 be AMENDED:

7-2-5. ~~If the result of such election is in favor of consolidation or change of boundaries, such~~The consolidation or change of boundaries ~~shall be in full force and take~~ takes effect on the first day of January ~~next after~~ following the general election ~~held succeeding the proclamation as provided in § 7-2-4~~ of the county officers for the consolidated county pursuant to § 7-2-10, or as otherwise set forth in the study committee's county consolidation plan.

Section 10. That § 7-2-7 be AMENDED:

7-2-7. ~~Any new county formed pursuant to this chapter shall take the name of the senior county and the location receiving the highest number of votes, cast at such election in the two or more counties for the county seat of the consolidated county, shall be the county seat of such new county~~The name of a new county formed pursuant to this chapter must be the name set forth in the study committee's county consolidation plan.

Section 11. That § 7-2-8 be AMENDED:

7-2-8. The board of county commissioners of each of ~~such~~ the counties comprising the newly consolidated county shall, after the proclamation of consolidation by the Governor, meet in joint session at the ~~office of the county auditor of the~~ county seat of ~~one of such counties~~ the county that had the largest population before consolidation on the first Monday in July ~~succeeding such~~ following the proclamation ~~and proceed to~~. The commissioners shall divide ~~each~~ the new county into ~~five~~ three to seven commissioner districts, numbering them consecutively, complying as nearly as possible with the provisions of the law regulating the districting of counties into commissioner districts, or provide that the commissioners are elected at large, if so designated in the study committee's county consolidation plan. ~~Such commissioner districts so established and the boundaries so fixed shall remain as established and fixed until the same may be changed as provided by law. At the next general election there shall be elected a commissioner for each district, each of whom shall be so chosen for two or four years as that the regular term of his successor shall thereafter conform to the requirements of law~~ The commissioners shall set the length of the initial term for each of the new commissioner districts to be either two or four years, so that all succeeding regular elections have, insofar as practicable, the same number of vacancies to be filled. The commissioner districts established pursuant to this section must remain the same unless changed pursuant to § 7-8-3 or 7-8-10.

Section 12. That § 7-2-9 be AMENDED:

7-2-9. The county officers in each of the counties that ~~may~~ have been consolidated shall continue to act in their respective counties until the officers of the new ~~counties shall have been~~ county are elected and qualified.

Section 13. That § 7-2-10 be AMENDED:

7-2-10. ~~There shall be elected in each new county at~~At the next general

election ~~succeeding~~ after the proclamation by the Governor, the voters of the consolidated county shall elect one set of county officers for ~~such~~ the new county.

Section 14. That § 7-2-11 be AMENDED:

7-2-11. ~~Such~~The new county ~~shall be~~ is entitled to the same number of members in the Legislature that ~~such~~ the counties had in the aggregate before consolidation, and such number ~~shall~~ must be elected at each general election until a new apportionment ~~shall have been made~~.

Section 15. That § 7-2-12 be AMENDED:

7-2-12. ~~The~~After consolidation, the property of each of ~~such~~ the consolidated counties ~~shall after consolidation become~~ is the property of the new county. ~~The indebtedness, if any, of each of such counties shall after consolidation be paid out of the taxes levied on the property in the respective territory of the county having contracted the same.~~

Section 16. That chapter 7-2 be amended with a NEW SECTION:

Any debt contracted by the former counties that comprise the new county may only be paid from taxes levied on property that was part of the territory of the former county as it was when it contracted the debt. The board of county commissioners of the new county may, by ordinance or resolution, assume the debt of each of the former counties as the debt of the new county and pay for the debt from taxes levied on the property of the whole county.

Signed March 14, 2024

Chapter 27

(Senate Bill 115)

An Act to prevent a county, township, or municipality from authorizing a guaranteed income program.

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

Section 1. That chapter 7-18A be amended with a NEW SECTION:

A county may not adopt, enforce, or maintain an ordinance, order, or rule for the purpose of making payments to an individual under a guaranteed income program. If a county fails to comply with the order, the attorney general must bring an action in the name of the state for injunctive relief against a county that has adopted an ordinance, order, rule, or program in violation of this section.

For the purposes of this section, the term "guaranteed income program" means a plan funded or administered by the government under which an individual is provided with regular, unconditional cash payments to be used for any purpose by the individual. The term does not include a program under which an individual is required to seek reemployment as a condition of any payments, perform work, or attend training.

Section 2. That chapter 8-5 be amended with a NEW SECTION:

A township may not adopt, enforce, or maintain an ordinance, order, or

rule for the purpose of making payments to an individual under a guaranteed income program. If a township fails to comply with the order, the attorney general must bring an action in the name of the state for injunctive relief against a township that has adopted an ordinance, order, rule, or program in violation of this section.

For the purposes of this section, the term "guaranteed income program" means a plan funded or administered by the government under which an individual is provided with regular, unconditional cash payments to be used for any purpose by the individual. The term does not include a program under which an individual is required to seek reemployment as a condition of any payments, perform work, or attend training.

Section 3. That chapter 9-19 be amended with a NEW SECTION:

A municipality may not adopt, enforce, or maintain an ordinance, order, or rule for the purpose of making payments to an individual under a guaranteed income program. If a municipality fails to comply with the order, the attorney general must bring an action in the name of the state for injunctive relief against a municipality that has adopted an ordinance, order, rule, or program in violation of this section.

For the purposes of this section, the term "guaranteed income program" means a plan funded or administered by the government under which an individual is provided with regular, unconditional cash payments to be used for any purpose by the individual. The term does not include a program under which an individual is required to seek reemployment as a condition of any payments, perform work, or attend training.

Signed March 6, 2024

MUNICIPAL GOVERNMENT

Chapter 28

(House Bill 1132)

An Act to revise certain provisions pertaining to municipal government.

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

Section 1. That a NEW SECTION be added to title 6:

Any nonprofit organization formed for historical or educational purposes, pursuant to chapter 47-22 may form and name a corporate townsite upon land owned by the corporation or in which it has a legal or equitable interest, by causing the land to be platted by a registered land surveyor and recorded in the office of the register of deeds of the county in which the land is located.

Any corporate townsite established pursuant to this section is known as a historical or educational townsite and must be named by the corporation.

Section 2. That a NEW SECTION be added to title 6:

A historical or educational townsite may be organized without meeting the minimum population or other requirements for municipalities as required by chapter 9-3.

Section 3. That a NEW SECTION be added to title 6:

The officers and directors of the corporation that forms and organizes the townsite are the governing body of a historical or educational townsite. The rules and regulations of the townsite must be provided in the articles of incorporation and the bylaws of the corporation.

Section 4. That a NEW SECTION be added to title 6:

No historical or educational townsite may receive any state or local tax moneys or any distribution from either state or local sources except as provided under § 7-18-12, or as approved by a local governing body or state agency from moneys allocated for tourism or educational or recreational purposes.

Section 5. That a NEW SECTION be added to title 6:

No historical or educational townsite is subject to any management or control of the state except as specifically provided by the Legislature or under the normal police powers of the political subdivision in which the townsite is located.

Section 6. That a NEW SECTION be added to title 6:

A townsite incorporated pursuant to this chapter may exist so long as the corporation maintains in good condition and repair all land, buildings, fences, fixtures, billboards, signs, and other improvements of the townsite, the township is actively operating for the purposes for which the townsite is incorporated, or until the corporation is dissolved in accordance with law.

The townsite must maintain the historical or educational integrity of the townsite's design, material, and workmanship of the sites, buildings, structures, and objects located within the platted townsite, including any advertising or promotional sign. The townsite must lose the status of historical or educational townsite if more than one-fourth of the number of properties experience:

(1) Loss or disintegration of the roof or roofing materials;

(2) Loss windows;

(3) Deterioration or missing siding material;

(4) Unstable foundation;

(5) Leaning severely from plumb; or

(6) Billboards or signs identifying, promoting, or advertising the townsite no longer conform to the requirements of chapter 31-29. For the purposes of this subdivision, the twelve continuous months required for determining a sign is abandoned does not apply.

Section 7. That a NEW SECTION be added to title 6:

The county in which the historic or educational townsite is located may take action, pursuant to section 6 of this Act, to dissolve the historical or educational townsite.

Section 8. That § 9-1-1 be AMENDED:

9-1-1. Terms used in this title, unless the context otherwise plainly requires, ~~shall~~ mean:

(1) "County," the county or counties ~~wherein the~~ where a municipality ~~concerned or affected~~ is located;

~~(2) "Elector(s)" or "qualified elector(s)," voter(s);~~

~~(3) General terms descriptive of an officer, act, proceeding, or thing shall have reference to a municipality concerned or affected;~~

~~(4)~~ "Governing body," the board of trustees, the board of commissioners, or the common council~~, as the case may be,~~ of a municipality ~~concerned or affected~~;

~~(5)~~(3) "Lot" includes parcel or tract of land;

~~(6)~~(4) "Municipal corporation" or "municipality," ~~all cities and towns~~ any city or town that is organized ~~under the laws of this state but shall not include any other political subdivisions~~ pursuant to this title;

~~(7)~~(5) "Owner," ~~as used in the chapters relating to local improvements,~~ the grantee in the last deed of conveyance of any lot or parcel of land recorded in the office of the register of deeds of the county or counties in which the municipality is located, or ~~his~~ the heirs or successors to the grantee; and

~~(8)~~(6) ~~Except as provided by § 9-13-13, any requirement for publication shall mean publication in the official newspaper of the municipality concerned or affected, if any; but if none, then, in a legal newspaper published in such municipality, if any; but if none, then, in any legal newspaper which serves such municipality;~~

~~(9) "Street" includes "avenue".~~

~~Personal service either within or without the state upon the person affected thereby by delivery of a copy of a notice required to be published shall be equivalent to the required publication~~"Publish," publication in an official newspaper of the municipality as designated by the governing body pursuant to § 9-12-6.

Section 9. That a NEW SECTION be added to chapter 9-1:

If notice is required to be published, proof of service to the person affected, pursuant to § 15-6-4, whether the personal service occurs within or without the state, is equivalent to the required publication.

Section 10. That § 9-1-3 be AMENDED:

9-1-3. The courts of this state shall take judicial notice of the existence of all municipalities organized under the ~~general~~ laws of this state and of any change of organization authorized ~~thereby~~ by law.

Section 11. That § 9-1-4 be AMENDED:

9-1-4. Every municipality ~~shall~~ must have and use a corporate seal~~, which it may change at pleasure~~ that may be changed by a majority vote of the governing body.

~~It also shall~~Each municipality must have a corporate name ~~and be styled the "city of _____" or the "town of _____," by which style it may exercise the powers conferred upon it~~. The corporate name must be used when exercising municipal power.

Section 12. That § 9-1-5 be AMENDED:

9-1-5. No contract of a municipality is valid unless the contract has been authorized by a vote of the governing body ~~at a duly assembled meeting thereof~~ at an official meeting.

Each written contract ~~shall~~ must be executed in the name of the municipality by the mayor or president of the board of trustees, be countersigned by the ~~auditor or clerk~~ finance officer, and have the corporate seal attached. However, the governing body of a municipality may, by ordinance or resolution, delegate to any employee of the municipality the authority to enter into a contract on behalf of the municipality and to execute the contract and any other instrument necessary or convenient for the performance of the contract subject to the limitations delegated by the governing body.

Section 13. That § 9-1-6 be AMENDED:

9-1-6. Any ~~citizen and taxpayer residing within~~ resident of a municipality may maintain an action or proceeding to prevent, by proper remedy, a violation of any provision of this title by that municipality.

Section 14. That § 9-2-1 be AMENDED:

9-2-1. ~~There shall be the following~~The three classes of municipal corporations are:

(1) Municipalities of the first class ~~are~~: municipal corporations with a population of five thousand and over;

(2) Municipalities of the second class ~~are~~: municipal corporations with a population between five hundred and ~~five thousand~~ four thousand nine hundred ninety-nine;

(3) Municipalities of the third class ~~are~~: municipal corporations with a population of ~~less~~ fewer than five hundred.

Section 15. That § 9-2-2 be AMENDED:

9-2-2. For the purpose of classification, the population of each municipality ~~shall be~~ is determined by the last preceding federal census. ~~Whenever the enumeration of such last preceding census was made with reference to territory~~ Whenever the municipal boundaries included in the last preceding census substantially ~~different~~ differ from ~~that embraced by~~ the current boundaries of the municipality, the governing body by resolution ~~may authorize and direct its auditor or clerk~~ may direct the finance officer to determine the population by filing ~~in his office~~ a certificate showing the ~~whole~~ number of persons who voted at the last preceding annual municipal election~~, which~~. That number multiplied by three ~~shall constitute~~ constitutes the population for the purpose of classification until the next federal census ~~shall have been~~ is completed.

Section 16. That a NEW SECTION be added to chapter 9-2:

If the population of a municipality, as shown by the last preceding federal census, increases or decreases causing the municipality to pass into a different class of municipality pursuant to § 9-2-1, the municipality may, through its governing body, apply to the circuit court having jurisdiction for a judgment authorizing the classification change. Upon the presentation of the application, the court must establish a time and place for hearing the application. Notice of the hearing must be given by publishing the order once a week for two successive weeks, the last publication to be not less than ten days prior to the day of the

hearing. Not less than ten days prior to the date of the hearing, the notice of hearing must also be posted in three public places in the municipality.

Section 17. That a NEW SECTION be added to chapter 9-2:

After the hearing, if the facts warrant the granting of the application, the court must make and enter its judgment changing the status of the municipality to that of a municipality of the appropriate class, pursuant to § 9-2-1. The court shall establish the time when the change is effective and shall determine the manner in which the change must be made.

A certified copy of the judgment shall be filed in the office of the secretary of state and the office of the register of deeds of the county where the municipality is located.

Section 18. That § 9-2-4 be AMENDED:

9-2-4. The present ~~form~~ classification of government of existing municipalities ~~shall continue~~ continues until changed as provided by this title.

Section 19. That § 9-2-7 be AMENDED:

9-2-7. For the purpose of dividing a municipality into wards, the number of inhabitants ~~shall be~~ is determined by subdivision 2-14-2(20). ~~However, the~~ The governing body may, by resolution, authorize ~~its auditor, clerk, or~~ the finance officer to determine the number of inhabitants by filing ~~in his office~~ a certificate showing the ~~whole~~ number of persons registered to vote in each ward of the municipality. That number multiplied by two ~~shall constitute~~ constitutes the number of inhabitants until the next federal census is completed.

Section 20. That § 9-3-1.1 be AMENDED:

9-3-1.1. A municipality may not be incorporated if any part of ~~such~~ the proposed municipality lies within three miles of any point on the perimeter of the corporate limits of ~~any~~ an incorporated municipality, unless the incorporated municipality refuses or fails to annex a territory ~~which~~ that is contiguous to ~~said~~ the incorporated municipality~~, and said~~ after the contiguous territory has properly petitioned ~~said~~ the municipality to be annexed ~~thereto,~~ as provided by § 9-4-1. ~~However, a~~

A proposed municipality may be incorporated that is within three miles of an incorporated municipality if the territory to be incorporated is in a different county and has a post office prior to incorporation.

Section 21. That § 9-3-3 be AMENDED:

9-3-3. Any person making application for the organization of a proposed municipality shall cause an accurate census to be taken of the landowners and the legal resident population of the proposed municipality not more than thirty days ~~previous~~ prior to the time of presenting the application to the board of county commissioners. The census ~~shall exhibit~~ must list the name of each landowner and legal resident residing in the proposed municipality ~~and the number of persons belonging to each family as of a certain date~~. The census ~~shall~~ must be verified by the affidavit of the person taking the census.

Section 22. That § 9-3-4 be AMENDED:

9-3-4. ~~Such survey, map, and census when completed and verified shall be left at some convenient place within the proposed municipality for a period of~~

~~not less than thirty days for examination by those having an interest in such application~~Within two days of the completion and verification of the survey, map, and census, the documents must be filed with the county auditor and made available to the public during regular business hours.

Section 23. That § 9-3-5 be AMENDED:

9-3-5. The application for incorporation of a proposed municipality ~~shall~~ must be by a petition verified by the circulator and signed by not less than twenty-five percent of the qualified voters who are either residents and registered voters in the proposed municipality or landowners in the proposed municipality who are also registered voters of this state. The application shall identify the type of government to be formed, the number of trustees, commissioners, or wards in the proposed municipality, the boundaries and area according to the survey, and the legal resident population according to the census taken. The application must include the name of the proposed municipality. The name may not be the same as any incorporated municipality in the state. The application ~~shall be presented at the time indicated in the notice of the application or as soon thereafter as~~ must be filed with the county auditor and heard at a regular or special meeting of the board of county commissioners ~~can receive and consider the application~~ within sixty days of being filed.

Section 24. That § 9-3-6 be AMENDED:

9-3-6. ~~If the board, after proof by affidavit or oral examination of witnesses, is satisfied that the requirements of this chapter have been fully complied with, the board shall make an order declaring that the proposed municipality shall, with the assent of the qualified voters who are either registered voters in the proposed municipality or landowners in the proposed municipality who are also registered voters of this state, be an incorporated municipality by the name specified in the application. The name shall be different from that of any other municipality in this state. The board shall also include in the order a date for an election to be conducted pursuant to Title 12~~After the public hearing on the application, if the board of county commissioners determines the requirements of this chapter have been met, the board must set a date for an election on the question of whether the proposed municipality is to be incorporated. The election must be conducted pursuant to title 12.

Section 25. That § 9-3-10 be AMENDED:

9-3-10. The vote upon the question of incorporation of a ~~territory shall~~ proposed municipality must be by ballot ~~which~~ that conforms to a ballot for a statewide question, except that the statement required to be printed on the ballot ~~shall~~ must be prepared by the state's attorney.

If a majority of the qualified voters, who are either residents and registered voters in the proposed municipality or landowners in the proposed municipality and are registered voters in this state, vote in favor of the incorporation, ~~such territory is deemed a~~ the proposed municipality is incorporated by the name and style specified in the ~~order of incorporation of the board of county commissioners~~ application for incorporation.

Section 26. That § 9-3-11 be AMENDED:

9-3-11. After the canvass of the vote ~~is cast and canvassed, such inspectors~~, the county auditor shall make a verified statement showing the whole number of ballots cast, together with the number voting for and the number voting against incorporation and shall return the same to the board of county commissioners at its next ~~session~~ meeting.

Section 27. That § 9-3-12 be AMENDED:

9-3-12. If satisfied of the legality of ~~such~~ the election, the board of county commissioners ~~shall~~ must make an order declaring that ~~such~~ the proposed municipality ~~has been~~ is incorporated by the name adopted. ~~Such~~ The order ~~shall be~~ is conclusive of the fact of ~~such~~ the incorporation in all suits by or against ~~such~~ the municipality.

Section 28. That § 9-3-13 be AMENDED:

9-3-13. ~~The~~Within the sixty days following the order declaring the incorporation, the board of county commissioners ~~shall have~~ has full power to settle and adjust all claims and accounts existing between ~~such~~ the municipality and the civil township or townships ~~of which the same~~ that formed a part of the municipality previous to its incorporation. ~~It~~ The board shall immediately proceed to settle and adjust ~~such~~ the claims and accounts with due regard for the interests of all concerned.

Section 29. That § 9-3-14 be AMENDED:

9-3-14. ~~The officers of any municipality organized under this title shall cause to be filed within thirty days thereafter in the office of the register of deeds of the county a certified copy of the canvass of the votes showing the result of the election held to determine the question of such organization, which the register of deeds shall record, and shall also cause a like certificate to be filed in the Office of the Secretary of State, who shall file the same and keep a registry of the municipalities so organized~~Within thirty days of the order declaring incorporation, the county auditor shall file a certified copy of the canvass of the votes showing the result of the election held on the question of incorporation with the register of deeds and the secretary of state. The register of deeds shall record the certified copy. The secretary of state shall keep a registry of all incorporated municipalities within the state.

Section 30. That § 9-3-18 be AMENDED:

9-3-18. The person having the highest number of votes respectively for each office to be filled ~~shall be~~ is declared elected. ~~In case of~~ If there is a tie ~~the inspectors of such election shall forthwith~~, the county auditor must determine by lot ~~which shall be~~ the person deemed elected. The ~~inspectors shall subscribe and certify a statement of the persons elected to fill the several offices in such municipality and file the same with the county auditor within ten days after the date of such election~~ county auditor shall notify each person elected of the person's election within two days after the result of the election is declared.

Section 31. That a NEW SECTION be added to chapter 9-3:

Each official elected at the first election shall hold office until the first Monday of the next following May or until a successor is elected and qualified.

Section 32. That § 9-3-20 be AMENDED:

9-3-20. The ~~regularity of the organization of any acting municipality shall be inquired into only~~ validity of the incorporation of any municipality may only be challenged in an action or proceeding instituted by or on behalf of the state.

Section 33. That § 9-11-6 be AMENDED:

9-11-6. If a petition signed by fifteen percent of the registered voters of any municipality, as determined by the total number of registered voters at the

last preceding general election, is presented to the governing body, requesting that an election be called for the purpose of voting upon a question of change of form of government or upon a question of the number of wards, commissioners, or trustees, the governing body ~~shall~~ must call an election ~~to be~~ that must be held within fifty days from the date of the filing of the petition with the municipal finance officer. At that election, the question of the change of form of government or the number of wards, commissioners, or trustees, or both, must be submitted to the voters. No petition is valid if filed more than six months after the circulation start date declared on the petition forms. If the petition is filed on or after January first prior to the annual municipal election and within sufficient time to comply with the provisions of § 9-13-14, the question may be submitted at that annual municipal election.

The election must be held upon the same notice and conducted in the same manner as other ~~city~~ municipal elections.

Section 34. That § 9-11-7 be AMENDED:

9-11-7. Both the question of form of government and the number of wards, trustees, or commissioners may be submitted upon one ballot, when both questions are to be voted upon.

The vote upon ~~such~~ the questions ~~shall~~ must be by ballot in the form and be cast in the manner provided by chapter 9-13.

Section 35. That a NEW SECTION be added to chapter 9-11:

Each first or second class municipality must be governed by a mayor and common council, a mayor and a common council with a city manager, a board of commissioners, or a board of commissioners with a city manager. Each third class municipality must be governed by a board of trustees.

The present form of government of existing municipalities must continue until changed as provided by this title.

Section 36. That § 9-1-9 be REPEALED.

~~An appeal and transcript, if a transcript exists, shall be filed by the finance officer as soon as practicable and shall stand for trial as soon as possible.~~

~~Each appeal taken to the circuit court shall be docketed as other causes pending in circuit court. An appeal relating to a conditional use permit determination shall be heard and determined pursuant to § 11-4-25.1.~~

Section 37. That § 9-2-3 be REPEALED.

~~Each municipality shall be governed by a board of trustees, a mayor and common council, or by a board of commissioners. A city manager may serve with any of the forms of government.~~

Section 38. That § 9-3-17 be REPEALED.

~~Each official elected at the first election shall hold office until the first Monday in May next following or until a successor is elected and qualified.~~

Section 39. That § 9-3-19 be REPEALED.

~~It shall be the duty of the county auditor to record in his office all certified statements concerning the election of officers, upon the organization of municipal corporations of the third class, required to be filed therein by the inspectors of~~

~~such election.~~

Section 40. That § 9-3-22 be REPEALED.

~~Any domestic corporation chartered under the laws of the State of South Dakota for historical or educational purposes, which qualifies as a tax exempt corporation under the laws of the State of South Dakota, may form and name a municipal corporation upon land owned by said corporation or in which it has a legal or equitable interest, by causing the same to be platted by a registered land surveyor and recording said plat in the office of the register of deeds of the county in which said land is located, in the same manner as other lands are platted and filed therein.~~

Section 41. That § 9-3-23 be REPEALED.

~~Any such municipal corporation established under § 9-3-22 shall be named by the corporation forming the same and shall be known as an "historical municipality" or an "educational municipality."~~

Section 42. That § 9-3-24 be REPEALED.

~~Said municipality may be organized without meeting the minimum population or other requirements for municipalities as required under this chapter, and only one resident need reside therein.~~

Section 43. That § 9-3-25 be REPEALED.

~~The governing board of such municipality shall be the officers and directors of the corporation forming and organizing such municipality and the rules and regulations of the municipality shall be those as provided in the articles of incorporation and the bylaws of said corporation.~~

Section 44. That § 9-3-26 be REPEALED.

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

Section 45. That § 9-3-27 be REPEALED.

~~Such corporation shall not be subject to any management or control of the state except as specifically provided by the State Legislature or under the normal police powers of the local governmental subdivision in which it is situated.~~

Section 46. That § 9-3-28 be REPEALED.

~~A municipality incorporated pursuant to § 9-3-22 shall exist so long as the corporation maintains all lands, buildings, fences, fixtures, billboards, signs, and other improvements in good condition and repair, and is actively operating for the purposes for which it is incorporated, or until the corporation is dissolved in accordance with law. The municipality shall possess and maintain its historical or educational integrity of design, materials, and workmanship of the sites, buildings, structures, and objects that are located within the platted municipal corporation, including advertising and promotional signs. The municipality shall lose its historical or educational municipality designation if more than one-fourth of such properties possess any of the following conditions:~~

~~(1) Loss or disintegration of the roof or roofing materials;~~

~~(2) Loss of windows;~~

~~(3) Deterioration or missing siding material;~~

~~(4) Unstable foundations;~~

~~(5) Leaning severely from plumb; and~~

~~(6) Billboards or signs identifying, promoting, or advertising the municipality no longer conform to the requirements of chapter 31-29.~~

~~However, for the purposes of subdivision (6), the twelve continuous months required for determining a sign is abandoned does not apply.~~

Section 47. That § 9-3-29 be REPEALED.

~~The South Dakota Department of Transportation or the county in which the historic or educational municipality is located may take action, pursuant to § 9-3-28, to dissolve the municipal corporation pursuant to the provisions of chapter 1-26.~~

Section 48. That § 9-3A-1 be REPEALED.

~~The governing boards of municipal corporations, through their designated officers, or the inhabitants thereof, with the approval of the governing board when authorized by federal law or regulation, or a circuit judge for the county in which an unincorporated town is situated, on petition of fifty percent of the resident freeholders in any unincorporated town, in trust for the several use and benefit of the municipality and the occupants thereof according to their respective interests in accordance with this chapter and federal statutes and regulations of appropriate federal agencies pertaining thereto, are authorized and it shall be their duty to acquire, enter, survey, dedicate, plat, make, and file all petitions, applications, statements, and transcripts necessary to acquire public land available, or made available, for townsites under the provisions of Title 43 of the United States Code, Chapter 17 thereof, relating to townsites on public lands.~~

Section 49. That § 9-3A-2 be REPEALED.

~~If at any time the petition is presented as provided for in § 9-3A-1 there is not in the treasury of the municipality moneys sufficient to pay for the land settled upon and occupied, the municipal authorities or the judge, as the case may be, may raise by subscription or otherwise sufficient funds to pay for said land and costs of entering the same, and any and all sums so advanced for such purpose shall be repaid in the manner provided for in § 9-3A-7.~~

Section 50. That § 9-3A-3 be REPEALED.

~~When the municipal authorities or the judge shall have entered at the proper land office the land, or any part thereof so settled and occupied as the site of such municipality, it shall be the duty of such municipal authorities or judge, his or their successors, to dispose of the trust so created and conferred by said act of Congress in the manner hereinafter specified.~~

Section 51. That § 9-3A-4 be REPEALED.

~~Any such municipal authorities or judge shall, subject to the provisions of this chapter, by a good and sufficient deed of conveyance grant and convey the title to each and every block, lot, share, or parcel of the same to the person, persons, associations, or corporations who shall occupy or possess or be entitled to the right of possession or occupancy thereof, according to several rights and interests of the respective claimants in or to the same as they existed in law or~~

~~equity at the time of the entry of such lands, or to the heirs or assigns of such claimants. Every such deed of conveyance made by such municipal authorities or judge pursuant to the provisions of this chapter shall be so executed and acknowledged as to admit the same to be recorded.~~

Section 52. That § 9-3A-5 be REPEALED.

~~Within thirty days after the entry of such lands, or if entered before July 1, 1971, on or before July 31, 1971, such authorities or judge so entering the same, shall give posted notice of entry in such municipality and publish notice thereof once each week for at least two consecutive weeks in the county where such land is situated. Such notice shall contain an accurate description of the lands so entered as stated in the certificate of entry or duplicate receipt for the purchase money thereof. Such notice shall direct that each and every person, association, or corporation claiming to be an occupant or to have, possess, or be entitled to the right of possession or occupancy of such lands, or any lot, share, or parcel thereof, shall within sixty days from the date of the first publication or posting of such notice, in person or by his, her or their or its duly authorized agent or attorney, sign a statement in writing containing an accurate description of the particular lot, lots, parcel, or parcels of land in which he, she, they or it claim to have an interest; and the specified right, interest or estate so claimed therein, the character and value of the improvements thereon, and how occupied or possessed by such claimant, and for how long a time, and any other matter or thing illustrating or supporting such claimant's right to a deed of the tract so described, such statement to be verified by the affidavit of the party or parties signing the same.~~

Section 53. That § 9-3A-6 be REPEALED.

~~Every person claiming to be entitled to such land or any part thereof, or his duly authorized agent or attorney, shall within sixty days after the first publication of such notice, sign a written statement containing an accurate description of the parcel or parts in which he claims to have an interest and the specific right, interest or estate which he claims to be entitled to receive and shall deliver the same to such authorities or judge; and any person failing to sign and deliver such statement within the time herein specified, shall as against adverse claimants, be forever barred from the right of claiming or recovering such lands, or any estate or interest therein in any court.~~

Section 54. That § 9-3A-7 be REPEALED.

~~As soon as may be after the expiration of sixty days from the time of the first published notice required by § 9-3A-5, the authorities or judge holding the title to lands described in such notice shall make a written statement, containing a true account of moneys expended in the acquisition of the title and the administration of the trust, including moneys paid for the purchase of such lands, all necessary traveling expenses, posting and publishing notices, serving summons, subpoenas, and other processes and all other necessary expenses incident to such trust, and also an account of charges for services rendered as such trustee. The whole amount of such statement of account shall be a charge in favor of the trustee upon the lands as held in trust and shall be paid pro rata by the claimants to such land, as their respective entitled shares thereof appear.~~

Section 55. That § 9-3A-8 be REPEALED.

~~In case there are adverse claimants to such lands or any part thereof, and the controversy is not settled by written agreement, it may be determined by submission in writing by the parties to reference or arbitration and by the written award of the arbitrators. If it is not so settled or determined within three months~~

~~from the time of entry of such land, either claimant may commence an action against the other pursuant to chapter 15-3.~~

Section 56. That § 9-3A-9 be REPEALED.

~~Before any authorities or judge shall be required to execute, acknowledge, or deliver any deed of conveyance of land or any part thereof, as hereinbefore provided, to any person entitled to that deed, the person shall pay or tender to the authorities or judge the amount shown by the statement provided in § 9-3A-7, chargeable upon the same or that part to be conveyed, together with interest on each of the items of the account at the Category A rate of interest as established in § 54-3-16 from the date of each item, and also other amounts as are reasonable for preparing, executing, and acknowledging the deed and acknowledgment fees.~~

Section 57. That § 9-3A-10 be REPEALED.

~~After the expiration of sixty days from the date of the first publication of the notice required by § 9-3A-5, the municipal authorities or judge shall proceed to award the lot or lots, parcel or parcels of land as provided in this chapter and for that purpose shall as soon as practicable and as near as practicable in the order of the time of filing the claimant's statements, examine each and every claim, read proofs filed, and hear additional testimony if deemed advisable; and if the claim should be found to comply with the provisions of this chapter, and no adverse claim and notice of contest shall have been filed, the said municipal authorities or judge shall proceed forthwith to make such claimant or claimants a good and sufficient deed of conveyance for such lot or lots or parcels of land so claimed.~~

Section 58. That § 9-3A-11 be REPEALED.

~~When any lots or parcels of land within the limits of any municipality shall remain unclaimed, after the expiration of the time allowed by this chapter for filing of claimant's statements, it shall be the duty of the municipal authority or the judge to convey the lots or parcels of land so remaining unclaimed, by good and sufficient deed, to the Board of Education or district school board in which such municipality is situated, to be taken and disposed of by such Board of Education or district school board for school purposes, and for the exclusive use and benefit of the occupants of such townsite, under such limitations as are provided by this chapter.~~

Section 59. That § 9-3A-12 be REPEALED.

~~If there is no such Board of Education or district school board, then the municipal authorities or judge shall sell and dispose of the said unclaimed lots or parcels of land so remaining for school purposes, and for the exclusive use and benefit of the occupants of such townsite, under the directions, limitations, and provisions contained in this chapter.~~

Section 60. That § 9-3A-13 be REPEALED.

~~The Board of Education, municipal authorities, or judge aforesaid shall appoint three competent and suitable freeholders of such municipality a board of appraisers, whose duty it shall be to make a careful inspection and examination of all the unclaimed lots or parcels of land aforesaid; and upon each of such lots or parcels of land they shall affix a reasonable and just valuation, and upon the completion of their appraisement they shall make and return a full and complete report of their proceedings and appraisement to the Board of Education, district school board, municipal authorities, or judge of the circuit court, which said report shall contain a full schedule of each and every lot or parcel of land remaining unclaimed, giving an exact description of said lots by their numbers and the~~

~~numbers of their block, and all parcels of land not so numbered shall be described by metes and boundaries, and upon each lot or parcel of land separately they shall designate the valuation thereof as fixed by their appraisement. Said appraisement and report shall be subscribed and sworn to by at least two of said appraisers.~~

Section 61. That § 9-3A-14 be REPEALED.

~~The Board of Education, district school board, municipal authorities, or judge, shall within thirty days after the receipt of the aforesaid report of said board of appraisers give public notice that all such unclaimed lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, will be sold at public auction to the highest bidder for cash, said notice to be given by publication in at least one newspaper of general circulation in the state once each week for at least two successive weeks immediately prior to such sale, specifying the time and place when said unclaimed lots or parcels of land will be sold, together with a description of the same as returned by the Board of Appraisers.~~

Section 62. That § 9-3A-15 be REPEALED.

~~At the time and place appointed in said notice the Board of Education, district school board, municipal authorities, or judge shall offer for sale at public auction subject to competitive bids all the lots and parcels of land, or so much thereof as may be considered for the best interest of the school district, returned by the report of said Board of Appraisers as unclaimed; provided, that no bid shall be received or lot or parcel of land sold for a less sum than the appraised valuation; and such sale shall continue open from day to day until all such lots or parcels of land, or so much thereof as may be considered for the best interest of the school district, shall have been offered for sale. Any lots or parcels of land remaining unsold at the close of such sale for want of bids equal to the appraised valuation thereof may thereafter be sold at private sale by said Board of Education, municipal authorities, or judge of the circuit court for a sum of money not less than the appraised valuation thereof, and not otherwise.~~

Section 63. That § 9-3A-16 be REPEALED.

~~Any purchaser at such sale, in addition to the amount of purchase money paid for any lot, lots, or parcel of land shall pay to the Board of Education, district school board, municipal authorities, or judge the sum of five dollars as a fee for making, executing, and acknowledging a deed of conveyance therefor; and all such lots or parcels of land purchased by any one person may be conveyed to such purchaser in one deed, which fee shall be in full for all charges of conducting sale, giving notice, appointing appraisers, etc.~~

Section 64. That § 9-3A-17 be REPEALED.

~~The proceeds derived from the sale of such lots or parcels of unclaimed land, after first paying the expenses of advertising, printing, and a per diem of not more than ten dollars per day to each member of the Board of Appraisers, for the days actually and necessarily employed by them in making such appraisements and report as aforesaid, and other expenses actually and necessarily incurred in the proper conduct and management of such sale, shall be immediately turned over at the close of said sale by the Board of Education or district school board, to be, by said treasurer, placed to the credit of a fund of said municipality to be used exclusively for the purchase of ground for school buildings, for the erection, enlarging, repairing, and furnishing of school buildings, and the payment of outstanding bonds, warrants, or other indebtedness contracted or created in the erection or construction of schoolhouses and procuring grounds. And if there be~~

~~no such Board of Education or district school board, then the net proceeds of such sale of unclaimed lots or parcels of land shall be held by the municipal authorities or the judge of the circuit court, in trust, as a fund for the exclusive use and benefit of the occupants of such townsite for any purpose related to education.~~

Section 65. That § 9-3A-18 be REPEALED.

~~Whenever any portion of the public lands of the United States shall be entered at the proper land office as a townsite by the municipal authorities of any municipality, it shall be the duty of such municipal authorities to immediately select so much of said land for the use of said municipality as they shall deem necessary and proper for the purpose of public parks, public buildings, and public school buildings; provided, however, that they shall not select any lands settled upon and occupied as a townsite by individuals or corporations at the time of the entry of such townsite; provided further, that if at the time of such selection any of said lands are settled upon and occupied so as to entitle the claimant to a deed therefor, and the authorities deem it for the best interests of said municipality to obtain said parcels of land to complete their selection, or to have such selection in a compact form, the said municipal authorities are hereby authorized to pay a reasonable compensation for said lands so settled upon and occupied.~~

Section 66. That § 9-3A-19 be REPEALED.

~~The said municipality shall pay its proportionate share of the expenses as provided in § 9-3A-7.~~

Section 67. That § 9-3A-20 be REPEALED.

~~All acts done by any such corporate authorities or judge and all proceedings had and taken before any county court, in accordance with the provisions of the Revised Political Code of 1903, Article 15, sections 1570 through 1593, inclusive, and amendments thereof, between January 1, 1919, and July 1, 1971, are hereby legalized and validated in all respects, and shall have the same force and effect as if the same had not been repealed by the Revised Code of 1919.~~

Section 68. That § 9-11-3.1 be REPEALED.

~~If the population of a municipality, as shown by the last preceding federal census, increases or decreases causing the municipality to pass into a different class of municipality pursuant to § 9-2-1, the municipality may, through its governing body, apply to the circuit court having jurisdiction for a judgment authorizing the classification change. Upon the presentation of the application, the court shall establish a time and place for hearing the application. Notice of the hearing shall be given by publishing the order once a week for two successive weeks, the last publication to be not less than ten days prior to the day of the hearing, Not less than ten days prior to the date of the hearing, the notice of hearing shall also be posted in three public places in the municipality.~~

Section 69. That § 9-11-4 be REPEALED.

~~Upon such hearing, if the facts warrant the granting of the application, the court shall make and enter its judgment changing the status of the municipality to that of a municipality of the appropriate class, pursuant to § 9-2-1. The court shall establish the time when the change shall be effective and determine the manner in which the change shall be made.~~

~~A certified copy of the judgment shall be filed in the office of the register of deeds of the county wherein such municipality is situated, and also in the Office of the Secretary of State.~~

Signed March 6, 2024

Chapter 29

(House Bill 1127)

An Act to modify requirements for incorporating municipalities that are within three miles of another incorporated municipality.

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

Section 1. That § 9-3-1.1 be AMENDED:

9-3-1.1. A municipality may not be incorporated if any part of ~~such~~ the proposed municipality lies within three miles of any point on the perimeter of the corporate limits of any incorporated municipality, unless ~~the~~:

(1) The incorporated municipality refuses or fails to annex a territory ~~which~~ that is contiguous to ~~said~~ the incorporated municipality, and ~~said~~ the contiguous territory has properly petitioned ~~said~~ the municipality to be annexed thereto, as provided by § 9-4-1. ~~However, a proposed municipality may be incorporated that is within three miles of an incorporated municipality if the~~; or

(2) The territory to be incorporated ~~is~~ has a post office and:

(a) Is in a different county ~~and has a post office prior to incorporation~~ than the incorporated municipality; or

(b) The incorporated municipality has a population of less than five thousand.

Signed February 21, 2024

Chapter 30

(Senate Bill 5)

An Act to reduce the amount of time required before the removal of a city manager is effective.

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

Section 1. That § 9-10-11 be AMENDED:

9-10-11. The governing body shall appoint the city manager ~~shall be appointed~~ for an indefinite term but may ~~be removed~~ suspend the manager by resolution of intent to remove the manager approved by a majority vote of the members of the governing body. ~~At least thirty days before such removal may become effective, the manager shall be furnished with a formal statement in the~~

~~form of a resolution passed by a majority vote of such governing body stating the intention of such governing body to remove him, and the reasons therefor. He~~ The resolution of intent to remove the manager must set forth the reasons for the suspension and proposed removal, and a copy of the resolution must be served immediately upon the manager. The manager may reply in writing to ~~such~~ the resolution and may request a public hearing within fifteen days of being served the resolution. If ~~so~~ a public hearing is requested by the manager, the governing body ~~shall~~ must ~~fix~~ set a time for ~~a~~ the public hearing upon the question of ~~his~~ the manager's removal, and the final resolution removing ~~him shall~~ the manager may not be adopted until ~~such~~ the public hearing has ~~been had~~ occurred.

~~Upon passage of a resolution stating the governing body's intention to remove the manager, such governing body may suspend him from duty, but his~~The manager's pay ~~shall~~ must continue until ~~his~~ the manager's removal ~~shall become~~ is effective as ~~herein~~ provided by this section. The action of the governing body in removing the manager ~~shall be~~ is final.

Signed February 12, 2024

Chapter 31

(House Bill 1069)

An Act to permit the display of campaign signs in municipalities in conjunction with the beginning of absentee voting.

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

Section 1. That chapter 9-30 be amended with a NEW SECTION:

A municipality must allow a campaign sign to be placed on private property in a residential, business, commercial, or industrial zone adjacent to a transportation right-of-way by or with the permission of the property owner beginning no later than ten days prior to the day when absentee voting in a primary or general election begins, and must allow the campaign sign to continue to be displayed through election day. A campaign sign displayed pursuant to this section must be removed within the seven days following the election. A municipality may regulate the use of campaign signs pursuant to § 9-30-3 in any manner that does not conflict with this section or applicable law.

For the purposes of this section, the term, campaign sign, means a free-standing object identifying and urging a person to vote for or against a particular ballot question or candidate for public office.

Signed February 14, 2024

Chapter 32

(House Bill 1026)

An Act to clarify the requirement for the construction or expansion of a municipal campground or tourist accommodation facility.

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

Section 1. That § 9-38-1 be AMENDED:

9-38-1. Each municipality may establish, improve, maintain, and regulate public parks, public squares, parkways, boulevards, swimming pools, camping, and other related facilities within or without the municipality, and to issue its bonds therefor, as provided by this title. A municipality may establish camping or tourist accommodation facilities if there is no existing private campground, inspected and approved by the Department of Health, located within fifteen miles of the municipality. However, a municipality may construct or expand camping or tourist accommodation facilities if there is an existing private campground within fifteen miles of the municipality if the owner of the existing campground approves the construction or expansion in writing. If the private campground has more than one owner, the owners of the private campground may only approve or refuse approval for the construction or expansion of the municipal campground or tourist accommodation facility as a group.

Camping and tourist accommodation facilities established before July 1, 1970, are deemed to have been established under the then existing authority to establish public parks, and municipalities may continue to maintain and regulate the facilities. The requirements of this section for the construction or expansion of a facility near an existing private campground do not apply to a municipality that leases camping and tourist accommodation facilities from the state which were in existence prior to January 1, 2017.

Signed February 5, 2024

TAXATION

Chapter 33

(House Bill 1018)

An Act to revise certain references to the Internal Revenue Code.

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

Section 1. That § 10-1-47 be AMENDED:

10-1-47. The term, United States Internal Revenue Code, or Internal Revenue Code, means the United States Internal Revenue Code as amended and in effect on January 1, ~~2023~~ 2024. This section applies to §§ 10-4-9.1, 10-4-9.2, 10-4-9.3, 10-4-9.4, 10-4-39, 10-6-157, and 10-43-10.1, and subdivisions 10-6A-1(7), 10-6B-1(5), 10-18A-1(6), 10-43-10.3(6), and 10-45A-1(5).

Signed February 5, 2024

Chapter 34

(House Bill 1082)

An Act to change the eligibility requirements, and the exempt value, of a property tax relief program for disabled veterans and surviving spouses.

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

Section 1. That § 10-4-40 be AMENDED:

10-4-40. ~~One~~ Two hundred ~~fifty~~ thousand dollars of the full and true value of the total amount of a dwelling or portion thereof classified as owner-occupied pursuant to §§ 10-13-39 to 10-13-40.4, inclusive, that is owned and occupied by a veteran who is rated as permanently and totally disabled from a service-connected disability is exempt from property taxation. The veteran shall apply for this partial exemption on a form prescribed by the secretary of revenue. Any application or supporting document for this exemption is confidential. Any veteran who would otherwise qualify for this exemption but fails to comply with the application deadline for the owner-occupied classification or the deadline for application for this exemption may petition the board of county commissioners to recalculate the taxes based upon the owner-occupied classification and this exemption and abate or refund the difference in taxes pursuant to chapter 10-18.

If the director of equalization determines that the veteran receives an exemption for the veteran's dwelling pursuant to this section, the veteran retains that exemption until ~~such time as~~ the property ownership is transferred, the veteran does not occupy the dwelling, or the property has a change in use. If the legal description of property is changed or amended and the veteran continues to reside in the dwelling, the veteran retains the exemption provided by this section.

Section 2. That § 10-4-41 be AMENDED:

10-4-41. ~~One~~ Two hundred ~~fifty~~ thousand dollars of the full and true value of the total amount of a dwelling, or portion thereof, classified as owner-occupied pursuant to §§ 10-13-39 to 10-13-40.4, inclusive, is exempt from property taxation if owned and occupied by:

(1) The surviving spouse of a veteran who was rated as permanently and totally disabled from a service-connected disability; or

(2) The surviving spouse of a veteran, who receives dependency and indemnity compensation from the United States Department of Veterans Affairs as a result of the veteran's service-connected death.

The surviving spouse shall apply for this partial exemption on a form prescribed by the secretary of revenue. Any application or supporting document for this exemption is confidential. Any surviving spouse who would otherwise qualify for this exemption but fails to comply with the application deadline for the owner-occupied classification or the deadline for application for this exemption may petition the board of county commissioners to recalculate the taxes based upon the owner-occupied classification and this exemption and abate or refund the difference in taxes pursuant to chapter 10-18.

If the director of equalization determines that the surviving spouse receives an exemption for the dwelling pursuant to this section, the surviving spouse retains that exemption until ~~such time as~~ the property ownership is transferred, the surviving spouse does not occupy the dwelling, the surviving spouse remarries, or the property has a change in use. If the legal description of

property is changed or amended and the surviving spouse continues to reside in the dwelling, the surviving spouse retains the exemption provided by this section.

Section 3. That § 10-6-154 be AMENDED:

10-6-154. The director shall mail or transmit electronically a notice of assessment to each property owner not later than March first that contains:

(1) A statement that property occupied by the owner or a parent of the owner may be eligible for tax relief by being classified as an owner-occupied single-family dwelling pursuant to §§ 10-13-39 through 10-13-40;

(2) A statement that property owned and occupied by a veteran who is rated as permanently and totally disabled from a service-connected disability, or the veteran's surviving spouse, may be eligible for tax relief pursuant to §§ 10-4-40 and 10-4-41;

(3) A statement that a dwelling specifically designed for use by a paraplegic as a wheelchair home that is owned and occupied by a paraplegic veteran, a veteran with the loss or loss of use of both lower extremities, or the veteran's surviving spouse may be eligible for tax relief pursuant to § 10-4-24.10;

(4) A statement that a dwelling owned and occupied by a paraplegic or an individual with the loss or loss of use of both lower extremities may be eligible for tax relief pursuant to § 10-4-24.11;

(5) A statement that property owned by a citizen who reached sixty-five years of age or who is disabled may be eligible for tax relief pursuant to chapter 10-6A; and

(6) Uniform information prescribed by the secretary of the department.

The secretary of the department may promulgate rules, pursuant to chapter 1-26, concerning the form and content of the notice.

Signed March 4, 2024

Chapter 35

(Senate Bill 131)

An Act to include shelterbelts as a factor affecting productivity in determining assessed value of agricultural land.

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

Section 1. That § 10-6-131 be AMENDED:

10-6-131. Before July first each year, the secretary of revenue shall annually provide each director the agricultural income value for each county as computed pursuant to § 10-6-127. The director shall annually determine the assessed value of agricultural land. The director may adjust the assessed value of agricultural land ~~may be adjusted by the director~~ to the extent one or more of the following factors affect the productivity of the land:

(1) Location;

(2) Size;

(3) Soil survey statistics;

(4) Terrain;

(5) Topographical condition;

(6) Climate;

(7) Accessibility; or

(8) Surface obstructions, including shelterbelts.

The director shall document each adjustment~~. The director shall document an adjustment~~ by using data from sources reasonably related to the adjustment being made. In addition, the director may use data from comparable sales of agricultural land to document the adjustment concerning productivity for any of the factors listed in this section.

If the actual use of agricultural land varies from the land use category specified by soil classification standards, or if any factors listed in this section exist that affect the productivity of the land, the property owner may request an examination of the land by the director on a form prescribed by the department. The director shall determine whether to adjust the assessed value of the agricultural land pursuant to the factors listed in this section.

The director shall document all supporting evidence for the adjustment determination. The director shall provide any adjustment documentation to the department upon request. The director must keep the adjustment documentation ~~must be kept~~ in the director's office for the life of the adjustment.

For the purposes of this section, the term "shelterbelt" means field shelterbelts, farmstead windbreaks, wildlife tree plantings, living snow fences, and other tree plantings made specifically for conservation purposes, but excluding trees planted for ornamental or commercial purposes.

Signed February 27, 2024

Chapter 36

(Senate Bill 3)

An Act to extend the length of time allowed for a tax agreement with an Indian tribe.

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

Section 1. That § 10-12A-6 be AMENDED:

10-12A-6. ~~Any~~ A tax collection ~~agreements~~ agreement between the department and an Indian tribe ~~shall~~ may not be for a term ~~not to exceed five~~ exceeding ten years~~. Such agreement, however, is renewable~~ but may be renewed upon expiration by the mutual consent of the parties.

Signed January 31, 2024

Chapter 37
(Senate Bill 28)

An Act to modify tax refunds for elderly persons and persons with a disability, to make an appropriation therefor, and to declare an emergency.

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

Section 1. There is appropriated from the general fund the sum of $425,000 to the Department of Revenue, for providing refunds for real property tax and sales tax to elderly and disabled persons pursuant to chapters 10-18A and 10-45A. A portion of the appropriated sum not to exceed twenty thousand dollars may be used for the administrative costs of this Act.

Section 2. The secretary of the Department of Revenue shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2025, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. That § 10-18A-5 be AMENDED:

10-18A-5. The amount of refund of real property taxes due or paid for a single-member household made pursuant to this chapter ~~shall be~~ is according to the following schedule:

If household income is		The refund of real property taxes due
~~more than~~at least:	but not more than	or paid shall be
$ 0	~~$8,949~~$10,038	35%
~~8,950~~10,039	~~9,199~~10,288	34%
~~9,200~~10,289	~~9,449~~10,538	33%
~~9,450~~10,539	~~9,699~~10,788	32%
~~9,700~~10,789	~~9,949~~11,038	31%
~~9,950~~11,039	~~10,199~~11,288	30%
~~10,200~~11,289	~~10,449~~11,538	29%
~~10,450~~11,539	~~10,699~~11,788	28%
~~10,700~~11,789	~~10,949~~12,038	27%
~~10,950~~12,039	~~11,199~~12,288	26%
~~11,200~~12,289	~~11,449~~12,538	25%
~~11,450~~12,539	~~11,699~~12,788	24%
~~11,700~~12,789	~~11,949~~13,038	23%
~~11,950~~13,039	~~12,199~~13,288	22%
~~12,200~~13,289	~~12,449~~13,538	21%
~~12,450~~13,539	~~12,699~~13,788	20%
~~12,700~~13,789	~~12,949~~14,038	19%

~~12,950~~14,039	~~13,199~~14,288	18%
~~13,200~~14,289	~~13,449~~14,538	17%
~~13,450~~14,539	~~13,699~~14,788	16%
~~13,700~~14,789	~~13,949~~15,038	15%
~~13,950~~15,039	~~14,199~~15,288	14%
~~14,200~~15,289	~~14,449~~15,538	13%
~~14,450~~15,539	~~14,699~~15,788	12%
~~14,700~~15,789	~~14,949~~16,038	11%
over ~~14,949~~16,038		No refund

Section 5. That § 10-18A-6 be AMENDED:

10-18A-6. The amount of refund of real property taxes due or paid for a multiple-member household made pursuant to this chapter ~~shall be~~ is according to the following schedule:

If household income is		The refund of real property taxes due
~~more than~~at least:	but not more than	or paid shall be
$ 0	~~$13,841~~$15,392	55%
~~13,842~~15,393	~~14,191~~15,742	53%
~~14,192~~15,743	~~14,541~~16,092	51%
~~14,542~~16,093	~~14,891~~16,442	49%
~~14,892~~16,443	~~15,241~~16,792	47%
~~15,242~~16,793	~~15,591~~17,142	45%
~~15,592~~17,143	~~15,941~~17,492	43%
~~15,942~~17,493	~~16,291~~17,842	41%
~~16,292~~17,843	~~16,641~~18,192	39%
~~16,642~~18,193	~~16,991~~ 18,542	37%
~~16,992~~18,543	~~17,341~~18,892	35%
~~17,342~~18,893	~~17,691~~19,242	33%
~~17,692~~19,243	~~18,041~~19,592	31%
~~18,042~~19,593	~~18,391~~19,942	29%
~~18,392~~19,943	~~18,741~~20,292	27%
~~18,742~~20,293	~~19,091~~20,642	25%
~~19,092~~20,643	~~19,441~~20,992	23%
~~19,442~~20,993	~~19,791~~21,342	21%
~~19,792~~21,343	~~20,141~~21,692	19%
over ~~20,141~~21,692		No refund

Section 6. That § 10-45A-5 be AMENDED:

10-45A-5. The amount of any claim made pursuant to this chapter by a claimant from a household consisting solely of one person ~~shall be~~ is determined as follows:

(1) If the claimant's income is ~~eight thousand nine hundred forty-nine~~ ten thousand thirty-eight dollars or less, a sum of two hundred fifty-eight dollars;

(2) If the claimant's income is ~~eight thousand nine hundred fifty~~ ten thousand thirty-nine dollars and not more than ~~fourteen thousand nine hundred forty-nine~~ sixteen thousand thirty-eight dollars, a sum of forty-six dollars plus three and four-tenths percent of the difference between ~~fourteen thousand nine hundred forty-nine~~ sixteen thousand thirty-eight dollars and the income of the claimant; and

(3) If the claimant's income is more than ~~fourteen thousand nine hundred forty-nine~~ sixteen thousand thirty-eight dollars, no refund.

Section 7. That § 10-45A-6 be AMENDED:

10-45A-6. The amount of any claim made pursuant to this chapter by a claimant from a household consisting of more than one person ~~shall be~~ is determined as follows:

(1) If household income is ~~thirteen thousand eight hundred forty-one~~ fifteen thousand three hundred ninety-two dollars or less, the sum of five hundred eighty-one dollars;

(2) If household income is ~~thirteen thousand eight hundred forty-two~~ fifteen thousand three hundred ninety-three dollars and not more than ~~twenty thousand one hundred forty-one~~ twenty-one thousand six hundred ninety-two dollars, a sum of seventy-four dollars plus seven and eight-tenths percent of the difference between ~~twenty thousand one hundred forty-one~~ twenty-one thousand six hundred ninety-two dollars and total household income; and

(3) If household income is more than ~~twenty thousand one hundred forty-one~~ twenty-one thousand six hundred ninety-two dollars, no refund.

Section 8. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 15, 2024

Chapter 38

(House Bill 1090)

An Act to revise provisions related to tax deeds and to declare an emergency.

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

Section 1. That chapter 10-25 be amended with a NEW SECTION:

A county that has acquired real property by a tax deed shall declare the real property to be surplus property and conduct a sale in accordance with the provisions of chapter 6-13. The sale must occur within one year of the issuance of the tax deed. The proceeds of the sale must be distributed in accordance with § 10-25-39. Notwithstanding the notice requirement contained in § 6-13-4, the

county shall give notice of the sale by publishing a notice of the sale at least twice, with the first publication not less than thirty days prior to the date of the sale.

Section 2. That chapter 10-25 be amended with a NEW SECTION:

Any person, except a county, acquiring real property by a tax deed after being issued a tax certificate shall offer the property at public auction in accordance with the provisions of chapter 6-13 and section 1 of this Act. The auction must occur within one year of the issuance of the tax deed. Following the sale, the seller of the property is entitled to compensation in the same manner as redemption of a tax certificate pursuant to § 10-24-1. The proceeds of the sale must be distributed in accordance with § 10-25-39.

Section 3. That § 10-25-39 be AMENDED:

10-25-39. The proceeds of the tax deed sale, after deducting the expenses incurred by the county in the proceeding to take tax deed and in the sale proceeding, ~~shall~~ must be distributed by prorating the proceeds on the basis of the tax levies for the most recent year for which taxes are included in the proceeds of the sale, until all tax and interest have been paid.

Any surplus proceeds of the tax deed sale that remain after payment of the taxes, penalty, interest, and other costs, must be returned to the prior owner of record. If the prior owner of record cannot be found within one hundred eighty days, the surplus must be transferred to the Unclaimed Property Division pursuant to chapter 43-41B.

Section 4. That § 10-25-12 be AMENDED:

10-25-12. Any deed ~~issued~~ acquired pursuant to ~~this chapter or chapter 10-26~~ sections 1 or 2 of this Act vests in the grantee an absolute estate in fee simple in the real property. However, the real property is subject to any claim that the state may have in the real property for taxes, liens, or encumbrances. The real property is also subject to any lien for past-due installments of special assessments for the financing of municipal improvements levied pursuant to chapter 9-43, including principal and interest on the installments except as provided by § 9-43-100. The holder of the deed or the holder's successor in interest is entitled to immediate exclusive possession of the real property described in the deed regardless of the rights of any person to redeem or question exclusive possession thereafter.

Section 5. That § 10-25-21 be REPEALED:

~~If any real property has been bid in by the treasurer in the name of the county at tax certificate sale and the tax certificate has not been redeemed from the sale or assigned by a certificate of sale, and sufficient time has elapsed since the sale that a tax deed may be properly issued, the board of county commissioners may, in lieu of taking a tax deed, procure from any person who has any interest in the real property, real or apparent, a transfer by deed of the interest. However, consideration for the transfer may not exceed the sum of fifteen dollars exclusive of taxes in connection with any real property.~~

Section 6. That § 10-25-22 be REPEALED:

~~If title to real property has been acquired by the county under the provisions of § 10-25-21, the board of county commissioners may compromise, abate, or fully cancel any taxes previously extended against the real property.~~

Section 7. That § 10-25-23 be REPEALED:

~~Any sale or rental of real property acquired by a county by transfer in lieu of a tax deed proceeding, shall be made in the same manner as provided for sale or rental of real property acquired by a tax deed.~~

Section 8. That § 10-25-27 be REPEALED:

~~The board of county commissioners shall control the rental of real property acquired by the county under tax deed. The rental proceeds from real property acquired by a county under tax deed shall, after deducting the expenses of collecting the proceeds, be apportioned by the county officials controlling the proceeds in the same manner as taxes are apportioned from the real property if the real property was still contributing in taxes.~~

Section 9. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 12, 2024

Chapter 39

(House Bill 1019)

An Act to clarify language regarding sales and use tax in certain statutes.

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

Section 1. That § 10-45-8 be AMENDED:

10-45-8. ~~There~~ Except as otherwise provided in this chapter, there is imposed a tax of four and two-tenths percent upon the gross receipts from all sales of tickets or admissions to~~:~~

(1) ~~places~~ Places of amusement ~~and~~ ;

(2) ~~athletic~~ Athletic contests; or

(3) ~~events, except as otherwise provided in this chapter~~Events.

Section 2. That § 10-45-9.1 be AMENDED:

10-45-9.1. Gross receipts from the sale of tangible personal property and any product transferred electronically to a person who intends to lease the property to persons in this state and actually does so are exempted from the provisions of this chapter and the tax ~~composed~~ imposed by it.

Section 3. That § 10-45-14.6 be AMENDED:

10-45-14.6. There are specifically exempted from the provisions of this chapter and the computation of the amount of tax imposed by it, the gross receipts from the sale of meals to inpatients of hospitals if ~~such~~ the meals are paid for, by law or by contract, by the United States, this state or a political subdivision, including, but not limited to, meals provided to medicare, medicaid, ~~champus~~ Tricare, Indian health service, or county poor relief patients.

Section 4. That § 10-45-113 be AMENDED:

10-45-113. ~~This chapter does not apply to~~ There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts of any person under eighteen years of age with gross receipts totaling less than one thousand dollars in any calendar year from any sale of tangible personal property, any service delivered, or any product or service transferred electronically for use in the state.

Section 5. That § 10-45-114 be AMENDED:

10-45-114. ~~This chapter does not apply to any person coaching a youth or amateur sport whose~~ There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts for coaching services performed for youth or amateur sports when the gross receipts ~~from~~ for the coaching services total less than four thousand dollars in any calendar year. For purposes of this section, a youth or amateur sport is any sport in which the participants are aged nineteen or younger and do not receive compensation for participation.

Section 6. That § 10-46-74 be AMENDED:

10-46-74. ~~This chapter does not apply to any person coaching a youth or amateur sport whose~~ There are hereby specifically exempted from the provisions of this chapter and from the computation of the amount of tax imposed by it, the gross receipts for coaching services performed for youth or amateur sports when the gross receipts ~~from~~ for the coaching services total less than four thousand dollars in any calendar year. For purposes of this section, a youth or amateur sport is any sport in which the participants are aged nineteen or younger and do not receive compensation for participation.

Section 7. That § 10-45-12.7 be AMENDED:

10-45-12.7. There are hereby specifically exempted from the provisions of this chapter and from the computation of the tax imposed by it, the gross receipts ~~of any person~~ for officiating services provided at an amateur sporting event. ~~However, this exemption does not apply to any person officiating any sporting event sponsored and operated by any elementary, secondary, or postsecondary school.~~

Section 8. That § 10-45C-1 be AMENDED:

10-45C-1. ~~As used in this chapter~~ Terms used in this chapter mean:

~~(a)~~(1) "Agreement," ~~means~~ the Streamlined Sales and Use Tax Agreement;

~~(b)~~(2) "Certified automated system," ~~means~~ software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction;

~~(c)~~(3) "Certified service provider," ~~means~~ an agent certified jointly by the states that are signatories to the agreement to perform all of the seller's sales tax functions;

~~(d)~~(4) "Person," ~~means~~ an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity;

~~(e)~~(5) "Sales tax," ~~means~~ the tax levied under chapter 10-45;

~~(f)~~(6) "Seller," ~~means~~ any person making sales, leases, or rentals of tangible personal property, any product transferred electronically, or services;

~~(g)~~(7) "State," ~~means~~ any state of the United States and the District of Columbia; and

~~(h)~~(8) "Use tax," ~~means~~ the tax levied under chapter 10-46.

Signed January 31, 2024

Chapter 40

(Senate Bill 78)

An Act to provide for an E15 fuel tax refund.

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

Section 1. That chapter 10-47B be amended with a NEW SECTION:

Beginning in fiscal year 2025 and ending in fiscal year 2030, any money deposited in the ethanol infrastructure incentive fund must be used to provide fuel tax refunds in accordance with this section. A licensed marketer that has demonstrated compliance with alternative fuel compatibility requirements with the Department of Agriculture and Natural Resources may claim a fuel tax refund in an amount equal to five cents multiplied by the total number of gallons of ethanol blended gasoline classified as E15 sold and dispensed by the licensed marketer during the preceding calendar year through motor fuel pumps located on its retail premises in this state. A licensed marketer may claim a refund for calendar years 2025 through 2029. The licensed marketer must apply for the refund on a form provided by the Governor's Office of Economic Development. The Governor's Office of Economic Development shall publish the application form on its website. The licensed marketer must complete the application form and file it with the Governor's Office of Economic Development within thirty days after the end of the calendar year for which the refund is claimed. The commissioner of the Governor's Office of Economic Development shall approve or deny the application within ninety days after it is filed. Upon approval of the application, the commissioner shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act. If the amount of money on deposit in the ethanol infrastructure fund is not sufficient to pay in full all the allowable tax refunds for the calendar year, the payments must be prorated among the applicants. The Governor's Office of Economic Development shall promulgate rules pursuant to chapter 1-26 prescribing the information that must be included in the application form, the procedure for filing the form, and the process for appealing a denial of an application.

Signed February 15, 2024

PLANNING, ZONING, AND HOUSING PROGRAMS

Chapter 41

(House Bill 1128)

An Act to require a zoning authority to determine that a well is an established well that has not been abandoned in making a permitting decision.

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

Section 1. That a NEW SECTION be added to chapter 11-2:

When a well is at issue in making a determination for the implementation of a zoning ordinance requirement, the zoning authority must determine whether the well is an established well that has not been abandoned.

A well that is either abandoned or not established, or both, must not be used as a basis for denial of the zoning determination.

Terms used in this section mean:

(1) "Abandoned well," a well in such a state of disrepair that its original purpose cannot reasonably be achieved or that has not been used for water production in the past two calendar years;

(2) "Established well," a well for which:

(a) A well completion report is on file with the Department of Agriculture and Natural Resources; or

(b) The owner of the well files a sworn affidavit with the register of deeds on the legal description of the property in the county in which the well is located affirming that the well has been used for water production for more than one week in each of the two calendar years preceding submission of the sworn affidavit; and

(3) "Well," an artificial excavation or opening in the ground, made by means of digging, boring, drilling, jetting, or by any other artificial method, for the purpose of obtaining groundwater.

Signed February 20, 2024

Chapter 42

(Senate Bill 39)

An Act to prohibit a homeowners' association from placing restrictions on firearms or firearm ammunition.

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

Section 1. That chapter 11-5 be amended with a NEW SECTION:

A homeowner's association may not include or enforce a provision in a governing document that prohibits, restricts, or has the effect of prohibiting or restricting the lawful:

(1) Possession, transportation, or storing of a firearm, any part of a firearm, or firearm ammunition; or

(2) Discharge of a firearm.

For the purposes of this section, the term "governing documents" means a written instrument by which a homeowners' association may exercise power to manage, maintain, or otherwise affect the property under the jurisdiction of the homeowners' association.

For the purposes of this section, the term "homeowners' association" means any incorporated or unincorporated association in which membership is based upon owning or possessing an interest in real property and that has the authority, pursuant to recorded covenants, bylaws, or other governing documents, to assess and record liens against the real property of its members.

Signed February 5, 2024

Chapter 43
(Senate Bill 118)

An Act to permit the use of an online management and communication platform to be used by homeowners who are governed by a restrictive contract.

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

Section 1. That a NEW SECTION be added to chapter 11-5:

It is lawful for the owner of real property exercising the power conferred by § 11-5-1 to use an online management and communication platform for the purpose of voting online notwithstanding the provisions of chapters 47-22 and 47-23.

Signed February 21, 2024

Chapter 44
(House Bill 1240)

An Act to permit a homeowner's association, development, or incorporated community to modify a restrictive covenant.

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

Section 1. That a NEW SECTION be added to chapter 11-5:

If a declaration or contract in writing, as provided in § 11-5-2, fails to

provide a provision permitting a modification to the declaration or contract, a vote of two-thirds of the owners of real property governed by the declaration or contract is required to modify the declaration or contract.

Signed March 14, 2024

Chapter 45

(House Bill 1194)

An Act to clarify provisions pertaining to tax increment finance districts.

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

Section 1. That § 11-9-1 be AMENDED:

11-9-1. Terms used in this chapter mean:

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

(2) "District," a tax increment financing district;

(3) "Governing body," the board of trustees, the board of commissioners, the board of county commissioners, or the common council of a municipality;

(4) "Grant," the transfer of money or property to a transferee for a governmental purpose that is not a related party to or an agent of the ~~municipality~~ political subdivision;

(5) ~~"Municipality," any incorporated city or town in this state and, for purposes of this chapter only, any county in this state;~~

~~(6)~~ "Planning commission," a planning commission created under ~~chapter~~ chapters 11-2 or 11-6 ~~or~~, a ~~municipal~~ planning committee of a governing body of a ~~municipality that has no~~ political subdivision that does not have a planning commission, or ~~, if the municipality is a county having no planning commission or planning committee, the board of county commissioners~~ the governing body of a political subdivision that does not have a planning commission or planning committee;

(6) "Political subdivision," a municipality, as defined in § 11-6-1, or county of this state;

(7) "Project plan," the properly approved plan for the development or redevelopment of a tax increment financing district including all properly approved amendments to the plan;

(8) "Tax increment financing district," a contiguous geographic area within a ~~municipality~~ political subdivision defined and created by resolution of the governing body;

(9) "Taxable property," all real and personal taxable property located in a tax increment financing district;

(10) "Tax increment valuation," ~~is~~ the total value of the tax increment financing district minus the tax increment base as determined pursuant to § 11-9-19.

Section 2. That § 11-9-2 be AMENDED:

11-9-2. A ~~municipality~~ political subdivision may ~~exercise those powers~~

~~necessary and convenient to carry out the purposes of this chapter, including the power to~~:

(1) Create one or more districts and define ~~the~~ each district's boundaries;

(2) Prepare project plans, approve the plans, and implement the provisions and purposes of the plans, including the acquisition by purchase or condemnation of real and personal property within the district and the sale, lease, or other disposition of property to private individuals, partnerships, corporations, or other entities at a price less than the cost of the acquisition and of any site improvements undertaken by the ~~municipality~~ political subdivision pursuant to a project plan;

(3) Issue tax increment financing bonds;

(4) Deposit moneys into the special fund of any district; and

(5) Enter into any contract or agreement, including an agreement with bondholders, determined by the governing body to be necessary or convenient to implement the provisions and effectuate the purposes of a project plan. A contract or agreement may include conditions, restrictions, or covenants that run with the land or otherwise regulate the use of land or that establish a minimum market value for the land and completed improvements to be constructed by a specific date, which date may not be later than the date of termination of the district pursuant to § 11-9-46. Any contract or agreement that provides for the payment of a specific sum of money at a specific future date ~~shall~~ must be made pursuant to the provisions of chapter 6-8B.

Section 3. That § 11-9-3 be AMENDED:

11-9-3. The planning commission shall hold a hearing at which interested parties are afforded a reasonable opportunity to express views on the proposed creation of a district and the district's proposed boundaries. ~~Notice of the hearing shall be published once~~ The planning commission shall publish notice of the hearing at least once, not ~~less~~ fewer than ten nor more than thirty days before the date of the hearing, in a legal newspaper having a general circulation in the redevelopment area of the ~~municipality~~ political subdivision. Before publication of the notice, ~~a copy of the notice shall be sent by first class mail~~ the planning commission shall send a copy of the notice to the chief executive officer of each local governmental entity having the power to levy taxes on property located within the proposed district and to the school board of any school district that has property located within the proposed district by first class mail.

Section 4. That § 11-9-5 be AMENDED:

11-9-5. ~~The~~To establish a district, the governing body ~~shall~~ must adopt a resolution that:

(1) Describes the boundaries~~, which may be the same as those recommended by the planning commission,~~ of a district with sufficient definiteness to identify with ordinary and reasonable certainty the territory included. The boundaries may not split a whole unit of property that is being used for a single purpose;

(2) Creates the district on a given date;

(3) Includes a finding that the assessed value of the taxable property in the district plus the tax increment base of all other existing districts does not exceed ten percent of the total assessed value of all taxable property in the political subdivision; and

(4) Assigns a name to the district for identification purposes. The first district created in each ~~municipality shall~~ political subdivision must be known as "Tax Increment Financing District Number One, City (or Town, or County) of _____." Each subsequently created district ~~shall~~ must be assigned the next consecutive number.

Section 5. That § 11-9-10 be AMENDED:

11-9-10. ~~Any area which by reason of~~For the purposes of this chapter, the term "blighted area" means an area that substantially impairs or arrests the sound growth of the political subdivision, inhibits housing development, constitutes an economic or social liability, or is a danger in its present condition and use to the health, safety, morals, or welfare of the public because of:

(1) The presence of a substantial number of substandard, slum, deteriorated, or deteriorating structures;

(2) ~~Predominance~~A predominance of defective or inadequate street layouts;

(3) Faulty lot layout in relation to size, adequacy, accessibility, or usefulness;

(4) Insanitary or unsafe conditions;

(5) ~~Deterioration~~The deterioration of site or other improvements;

(6) ~~Diversity~~A diversity of ownership, tax, or special assessment delinquency exceeding the fair value of the land;

(7) Defective or unusual conditions of title;

(8) The existence of conditions which endanger life or property by fire and other causes; or

(9) ~~Any combination of such factors;~~

~~substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations, or constitutes an economic or social liability and is a menace to the public health, safety, morals, or welfare in its present condition and use, is a blighted area~~A predominance of open space with obsolete platting, diversity of ownership, or deterioration of structures or site improvements.

Section 6. That § 11-9-14 be AMENDED:

11-9-14. For the purposes of this chapter, the term~~, project costs,~~ "project costs" are any expenditures made or estimated to be made, or monetary obligations incurred or estimated to be incurred, by a ~~municipality that are~~ political subdivision that are listed in a project plan as grants or costs of public works or improvements within a district, plus any incidental costs diminished by any income, special assessments, or other revenues, other than tax increments, received, or reasonably expected to be received, by the ~~municipality~~ political subdivision in connection with the implementation of the plan.

Section 7. That § 11-9-15 be AMENDED:

11-9-15. ~~Project costs include~~For the purposes of this chapter, the term "project costs" means:

(1) Capital costs, including the actual costs of the construction of public works or improvements, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair, or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; the clearing, over-excavation, and grading of land, including

use of engineered fill and soil compaction; and the amount of interest payable on tax increment bonds issued pursuant to this chapter until ~~such time as~~ the positive tax increments to be received from the district, as estimated by the project plan, are sufficient to pay the principal of and interest on the tax increment bonds when due;

(2) Financing costs, including all interest paid to holders of evidences of indebtedness issued to pay for project costs, any premium paid over the principal amount thereof because of the redemption of obligations prior to maturity, and a reserve for the payment of principal and interest on obligations in an amount determined by the governing body to be reasonably required for the marketability of obligations;

(3) Real property assembly costs, including the actual cost of the acquisition by a ~~municipality~~ political subdivision of real or personal property within a district, less any proceeds to be received by the ~~municipality~~ political subdivision from the sale, lease, or other disposition of property pursuant to a project plan;

(4) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(5) Imputed administrative costs, including reasonable charges for the time spent by a municipal ~~employees~~ or county employee in connection with the implementation of a project plan;

(6) Relocation costs;

(7) Organizational costs, including the costs of conducting environmental impact and other studies and the costs of informing the public of the creation of a district and the implementation of project plans; and

(8) Payments and grants made, at the discretion of the governing body, ~~which~~ that are found to be necessary or convenient to the creation of a district, the implementation of project plans, or to stimulate and develop the general economic welfare and prosperity of the state. No payment or grant may be used for any residential structure pursuant to § 11-9-42.

Section 8. That § 11-9-16 be AMENDED:

11-9-16. The project plan for each district ~~shall include~~ must contain:

(1) A map showing the existing uses and conditions of real property in the district;

(2) A map showing the proposed improvements and uses;

(3) A map showing the proposed changes of zoning ordinances;

(4) A statement listing changes needed in the master plan, map, building codes, and ~~municipal~~ ordinances of the political subdivision;

(5) A list of estimated nonproject costs; and

(6) A statement of a proposed method for the relocation of persons to be displaced.

Section 9. That § 11-9-17 be AMENDED:

11-9-17. The governing body shall approve a project plan for each district. The approval by resolution ~~shall~~ must contain findings that the plan is feasible and in conformity with the master plan, if any, of the ~~municipality~~ political subdivision.

Section 10. That § 11-9-20 be AMENDED:

11-9-20. ~~On application in writing by the municipal finance officer, on a form prescribed by the department~~Upon receiving an application by the county auditor or municipal finance officer, as applicable, on a form prescribed by the department, the department ~~shall~~ must determine the aggregate assessed value of the taxable property in the district, which aggregate assessed value, on certification to the county auditor or the municipal finance officer, ~~constitutes~~ as applicable, is the tax increment base of the district. The application must be accompanied by a detailed parcel list of the included legal descriptions, property ownership, and value, as provided by the director of equalization office, of the affected corresponding county. Except as provided in § 11-9-20.1, the department shall use the values, as last previously certified by the department, adjusted for the value to the date the district was created, for any completed buildings or additions~~, completed or removed,~~ and without regard to any reduction pursuant to §§ 1-19A-20, 10-6-137, 10-6-137.1, and 10-6-144.

Section 11. That § 11-9-28 be AMENDED:

11-9-28. Notwithstanding any other provision of law, each officer charged by law to collect and pay over or retain local real property taxes shall first, on the next settlement date provided by law, pay over to the ~~municipal~~ county treasurer or municipal finance officer, as applicable, out of all taxes collected, that portion that represents a tax increment allocable to the ~~municipality~~ political subdivision.

Section 12. That § 11-9-30 be AMENDED:

11-9-30. Payment of project costs may be made by any of the following methods or by any combination of methods:

(1) Payment by the ~~municipality~~ political subdivision from the special fund of the district;

(2) Payment out of the ~~municipality's~~ funds of the political subdivision;

(3) Payment out of the proceeds of the sale of municipal bonds issued by the municipality under chapter 10-52 or 10-52A, or both;

(4) Payment out of the proceeds of revenue bonds issued by the ~~municipality~~ political subdivision under chapter 9-54; or

(5) Payment out of the proceeds of the sale of tax increment bonds issued by the ~~municipality~~ political subdivision under this chapter.

Section 13. That § 11-9-31 be AMENDED:

11-9-31. ~~All tax increments received in a district shall, upon receipt by the municipal~~The county treasurer or municipal finance officer, ~~be deposited~~ as applicable, shall deposit all tax increments received in a district into a special fund for the district. The ~~municipal~~ county treasurer or municipal finance officer, as applicable, may deposit additional moneys into the fund pursuant to an appropriation by the governing body. Subject to any agreement with bondholders, moneys in the fund may be temporarily invested in the same manner as other ~~municipal~~ funds of the political subdivision.

Section 14. That § 11-9-32 be AMENDED:

11-9-32. Moneys ~~shall~~ may only be paid out of the special fund created under § 11-9-31 ~~only~~ to pay project costs or grants of the district, to reimburse the ~~municipality~~ political subdivision for the ~~payments~~ payment of project costs or

grants of the district, or to satisfy claims of holders of tax increment bonds issued for the district.

Section 15. That § 11-9-35 be AMENDED:

11-9-35. Tax increment bonds may not be issued in an amount exceeding the aggregate project costs. The bonds may not mature later than twenty years from the date the district was created. The bonds may contain a provision authorizing the redemption of the bonds, in whole or in part, at stipulated prices, at the option of the ~~municipality~~ political subdivision, on any interest payment date and ~~shall~~ must provide the method of selecting the bonds to be redeemed. The principal and interest on the bonds may be payable at any time and at any place. The bonds may be payable to the bearer or may be registered as to the principal or principal and interest. The bonds may be in any denominations.

Section 16. That § 11-9-36 be AMENDED:

11-9-36. Tax increment bonds are payable only out of the special fund created under § 11-9-31. Each bond ~~shall~~ must state that the bond is only payable out of the special fund and that the bond does not constitute a general indebtedness of the ~~municipality~~ political subdivision or a charge against the ~~municipality's~~ general taxing power of the political subdivision.

Section 17. That § 11-9-39 be AMENDED:

11-9-39. To increase the security and marketability of its tax increment bonds, a ~~municipality~~ political subdivision may do either or both of the following:

(1) Create a lien for the benefit of the bondholders upon any public improvements or public works financed by the bonds or the revenues from the bonds; or

(2) Make covenants and do any and all acts, not inconsistent with the South Dakota Constitution, necessary, convenient, or desirable in order to additionally secure bonds or to make the bonds more marketable according to the best judgment of the governing body, including the establishment of a reserve for the payment of principal and interest on the bonds funded from the proceeds of the bonds or other revenues, including tax increments, of the ~~municipality~~ political subdivision.

Section 18. That § 11-9-40 be AMENDED:

11-9-40. Tax increment bonds may be sold at public or private sale at a price that the governing body deems in the best interests of the ~~municipality~~ political subdivision.

Section 19. That § 11-9-45 be AMENDED:

11-9-45. After all project costs and all tax increment bonds of the district have been paid or provided for, subject to any agreement with bondholders, any moneys remaining in the fund ~~shall~~ must be paid to each taxing district in the amount belonging to each respectively, with due regard for what portion of the moneys, if any, represent tax increments not allocated to the ~~municipality~~ political subdivision and what portion, if any, represents voluntary deposits of the ~~municipality~~ political subdivision into the fund.

Section 20. That § 11-9-48 be AMENDED:

11-9-48. The department may publish annually on its website a report of

each tax increment financing district in the state. Any ~~municipality~~ political subdivision that has created a tax increment financing district shall provide the department with any information requested to compile the report.

Section 21. That § 11-9-7 be REPEALED:

~~The resolution required by § 11-9-5 shall contain a finding that the aggregate assessed value of the taxable property in the district plus the tax increment base of all other existing districts does not exceed ten percent of the total assessed value of all taxable property in the municipality.~~

Section 22. That § 11-9-11 be REPEALED:

~~Any area which is predominantly open and which because of obsolete platting, diversity of ownership, deterioration of structures or of site improvements, or otherwise, substantially impairs or arrests the sound growth of a municipality, is a blighted area.~~

Signed March 6, 2024

Chapter 46

(House Bill 1041)

An Act to modify the definition of public infrastructure to allow a federally recognized Indian tribe to be eligible for housing infrastructure grants and loans and to declare an emergency.

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

Section 1. That § 11-15-1 be AMENDED:

11-15-1. Terms used in this chapter mean:

(1) "Authority," the South Dakota Housing Development Authority;

(2) "Housing infrastructure," the installation, replacement, upgrade, or improvement of public infrastructure for the support of a single-family or multi-family housing project; and

(3) "Public infrastructure," a right of way, water distribution system, sanitary sewer system, storm sewer system, lift station, street, road, bridge, curb, gutter, sidewalk, traffic signal, or streetlight, which is or will be located in the state and is or will be owned, maintained, or provided by a political subdivision of this state or federally recognized Indian tribe; or excavation, compaction, or acquisition of land for such purposes.

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

Signed January 31, 2024

ELECTIONS

Chapter 47
(House Bill 1182)

An Act to revise provisions pertaining to the observation of the conduct of an election.

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

Section 1. That § 12-1-3 be AMENDED:

12-1-3. Terms used in this title mean:

(1) "Ballot question committee," as defined by § 12-27-1;

(2) "Candidate," a person whose name is on the ballot or who is entitled to be on the ballot to be voted upon for nomination or election at any election;

~~(2)~~(3) "Election," any election held under the laws of this state;

~~(3)~~(4) "Election officials," state and local officials charged with the duty of conducting elections and the canvass of returns;

~~(4)~~(5) "Elector," a person qualified to register as a voter, whether or not the person is registered;

~~(5)~~(6) "Electronic pollbook," an electronic system containing both the registration list and pollbook;

~~(6)~~(7) "General election," the vote required to be taken in each voting precinct of the state on the first Tuesday after the first Monday in November of each even-numbered year;

~~(7)~~(8) "Paid circulator," any person who receives money or anything of value for collecting signatures for a petition;

~~(8)~~(9) "Party office," an office of a political party organization as distinct from a public office;

~~(9)~~(10) "Person in charge of an election," or "person charged with the conduct of an election," the county auditor in all cases except local elections for a municipality, school district, township, or other political subdivision, in which case it is the officer having the position comparable to the auditor in that unit of government if not specifically designated by law;

~~(10)~~(11) "Petition," a form prescribed by the State Board of Elections, which contains the question or candidacy being petitioned, the declaration of candidacy if required and the verification of the circulator. If multiple sheets of paper are necessary to obtain the required number of signatures, each sheet shall be self-contained and separately verified by the circulator;

~~(11)~~(12) "Petition circulator," a resident of the State of South Dakota as defined under § 12-1-4, who is at least eighteen years of age who circulates nominating petitions or other petitions for the purpose of placing candidates or issues on any election ballot;

~~(12)~~(13) "Political party," beginning with the 2014 general election and each

general election thereafter, a party whose candidate for any statewide office received at least two and one-half percent of the total votes cast for that statewide office in either of the two previous general election cycles;

~~(13)~~(14) "Pollbook" or "poll list," a list containing in numerical order the names of all persons voting at the election and type of ballot voted;

~~(14)~~(15) "Polling place," a designated place voters may go to vote;

~~(15)~~(16) "Poll watcher," a person chosen to observe the conduct of an election by a candidate, political party, or ballot question committee;

(17) "Primary" or "primary election," an election held at which candidates are nominated for public office;

~~(16)~~(18) "Public office," an elected position in government;

~~(17)~~(19) "Registration list," a list of eligible voters;

~~(18)~~(20) "Registered mail," does not include certified mail;

~~(19)~~(21) "Registration officials," the county auditor and deputies and other persons authorized to assist in registration pursuant to chapter 12-4;

~~(20)~~(22) "Vote center," a polling place when the precinct has been defined as the entire jurisdiction and an electronic pollbook is utilized;

~~(21)~~(23) "Voter," a person duly registered to vote or one who is performing the act of voting;

~~(22)~~(24) "Independent (IND)" or "no party affiliation (NPA)," any currently registered voter who writes independent, I, Ind, no party affiliation, no party, no choice, nonpartisan, or line crossed off in the choice of party field on the voter registration form and any individual who is not currently registered to vote who leaves the choice of party field blank on the voter registration form;

~~(23)~~(25) "Independent candidate," notwithstanding the definition of independent as stated in this chapter, any registered voter regardless of party affiliation who declares to be an independent candidate for public office pursuant to this chapter;

~~(24)~~(26) "Other," any voter who writes a political party not recognized in South Dakota in the choice of party field on the voter registration form.

Section 2. That § 12-18-9 be AMENDED:

12-18-9. ~~Any person, except a candidate who is on the ballot being voted on at that polling place, may be present at any polling place for the purpose of observing the voting process. Any person may be present to observe the counting process. A candidate who is on the ballot being voted on at a polling place may only be present to cast the candidate's vote during voting hours. A number of poll watchers shall be permitted for each candidate at a primary election or political party and independent candidate at a general election pursuant to § 12-18-8.1. Each polling place shall be arranged in a manner that permits each poll watcher to be positioned in a location where the poll watcher can plainly see and hear what is done within the polling place.~~

Any candidate, party, or ballot question committee may have poll watchers present at a polling place for the purpose of observing the voting and counting process. During voting hours, a candidate who is on the ballot being voted on may not serve as a poll watcher and may only be present at a polling place to cast the candidate's vote.

Members of the public may observe the voting and counting process at any polling location in a manner that does not interfere with the duties of the poll workers or poll watchers. Each polling place must be arranged in a manner that permits each poll watcher and observer to be positioned in a location where the poll watcher and observer may plainly see and hear what is done within the polling place.

A violation of this section by either a poll watcher, observer, or a poll worker is a Class 2 misdemeanor.

Section 3. That chapter 12-21 be amended with a NEW SECTION:

A meeting of a recount board pursuant to this chapter must be open to the public. Members of the general public shall keep a reasonable distance from the ballots.

A violation of this section is a Class 2 misdemeanor.

Signed March 4, 2024

Chapter 48
(Senate Bill 18)

An Act to allow the secretary of state to share information from the statewide voter registration file.

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

Section 1. That chapter 12-4 be amended with a NEW SECTION:

The secretary of state may share information from the statewide voter registration file with any other state, territory, or local political subdivision of another state or territory to identify any duplicate registrations.

Before sharing information from the statewide voter registration file with any other jurisdiction pursuant to this section, the secretary of state must secure an agreement in writing from the chief election official of the jurisdiction with which the information is to be shared, that any personally identifiable information contained in the list may not be shared with or sold to any person who is not an election official for the jurisdiction with which the information is shared.

Signed March 6, 2024

Chapter 49
(Senate Bill 21)

An Act to rescind rule-making authority for the annual report of the number of voters removed from a county's voter registration list.

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

Section 1. That § 12-4-54 be AMENDED:

12-4-54. By March first of each year, the secretary of state shall submit a report to the State Board of Elections providing the number of voters removed from ~~the~~ a county's voter registration list from the previous year due to inactivity, death, felony conviction, mental incompetence, or relocation to another jurisdiction.

~~The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, designating the form and content of the report.~~ The content of ~~each~~ the report must be ~~made available for public inspection~~ published on the official website of the secretary of state.

Signed February 5, 2024

Chapter 50

(Senate Bill 19)

An Act to rescind rulemaking authority pertaining to the process for publishing required voter registration numbers.

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

Section 1. That § 12-4-55 be AMENDED:

12-4-55. On the first business day of each month and on the date of a primary, general, runoff, or special election in the state, the secretary of state shall publish ~~the following information~~ on the official website of the secretary of state:

(1) The total number of registered voters in each county of the state;

(2) The total number of registered voters in each legislative district in the state;

(3) The total number of voters registered as a member of a political party in each county of the state;

(4) The total number of voters registered as a member of a political party in each legislative district in the state;

(5) The total number of inactive voters in each county in the state; and

(6) The total number of inactive voters in each legislative district of this state.

~~The State Board of Elections shall promulgate rules, pursuant to chapter 1-26, designating the form for online publication of the information listed in this section~~.

Signed February 5, 2024

Chapter 51

(Senate Bill 99)

An Act to modify provisions pertaining to applying for an absentee ballot application and to declare an emergency.

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

Section 1. That § 12-19-2.1 be AMENDED:

12-19-2.1. At ~~anytime~~ any time prior to an election, a voter may apply for an absentee ballot in person at the office of and to the person in charge of the election ~~for an absentee ballot~~ during regular office hours ~~up to 5:00~~ or until five p.m. on the day before the election, whichever is later. If the voter applies in person, the voter ~~shall~~ must complete a combined absentee ballot application/return envelope and show the person in charge of the election the voter's identification card as required in § 12-18-6.1 or complete the affidavit as provided in § 12-18-6.2.

In the event of confinement because of sickness or disability, a qualified voter may apply in writing pursuant to the provisions of § 12-19-2 ~~in writing~~ and obtain an absentee ballot by authorized messenger ~~so~~ designated over the signature of the voter. The person in charge of the election ~~may deliver~~ shall provide the ballot to be delivered to the qualified voter to the authorized messenger ~~a ballot to be delivered to the qualified voter. Any~~. An application ~~for~~ to have a ballot delivered by authorized messenger must be received by the person in charge of the election before ~~3:00~~ three p.m. on the day of the election. If the application designating an authorized messenger also indicates a request for an absentee ballot for any future election, ~~such~~ the absentee ballot ~~shall~~ must be mailed to the address provided on the application. If no address is provided, the ballot ~~shall~~ must be mailed to the person's voter registration address.

Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 14, 2024

EDUCATION

Chapter 52

(House Bill 1058)

An Act to modify agency reporting requirements on licensure, certification, job placements, and the labor market.

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

Section 1. That § 13-1-60 be AMENDED:

13-1-60. If any department, board, or commission of the state administers a licensure or certification examination to any person who completed a degree program at an institution under the control of the Board of Regents, the department, board, or commission ~~shall annually~~ must report to the Board of Regents ~~and the Department of Labor and Regulation~~ the following:

(1) The number of persons who completed a degree program at each institution under the control of the Board of Regents to whom the department, board, or commission administered a licensure or certification examination during that year; and

(2) The number of persons in subdivision (1) who successfully passed the licensure or certification examination, including any subparts of any licensure or certification process.

Section 2. That § 13-1-61 be AMENDED:

13-1-61. If any department, board, or commission of the state administers a licensure or certification examination to any person who completes a degree program or a training program at a public technical college in the state, the department, board, or commission ~~shall annually~~ must report to the Board of Technical Education ~~and the Department of Labor and Regulation~~ the following:

(1) The number of persons who completed a degree program or training program at each public technical college in the state and to whom the department, board, or commission administered a licensure or certification examination during that year; and

(2) The number of persons in subdivision (1) who successfully passed the licensure or certification examination, including any subparts of any licensure or certification process.

Section 3. That § 13-1-63 be REPEALED:

~~The Department of Labor and Regulation shall annually work with the Board of Regents to determine the job placement outcomes for those persons completing a degree program at an institution under the control of the Board of Regents. The department shall also annually work with the Board of Technical Education to determine the job placement outcomes for those persons completing a degree program or training program at a public technical college in the state.~~

Section 4. That § 13-1-64 be REPEALED:

~~The Department of Labor and Regulation shall compile the information received pursuant to § 13-1-63 and provide it to the Executive Board of the Legislative Research Council no later than November fifteenth of each year.~~

Section 5. That § 60-6-23 be REPEALED:

~~The department shall publish a bulletin in which shall be made public all possible information with regard to the state of the labor market, including reports of the businesses of the various public employment offices.~~

Signed February 12, 2024

Chapter 53

(Senate Bill 127)

An Act to revise the requirements pertaining to average teacher compensation and to establish a minimum teacher salary.

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

Section 1. That § 1-45-38 be AMENDED:

1-45-38. There is hereby created the School Finance Accountability Board within the Department of Education. The board shall consist of five members appointed by the Governor. The members shall serve a term of four years.

The board may recommend that the provisions of § 13-13-73.5 be waived for a school district if the district can demonstrate that its lowest monthly general cash fund cash balance percentage is the result of special circumstances.

The board may recommend that a penalty against a school district imposed under ~~§ 13-13-73.6~~ section 5 of this Act be waived, in whole or in part, if the district can demonstrate that its failure to comply with § 13-13-73.6 or section 4 of this Act is due to special circumstances. The board may recommend the Department of Education review the accreditation of a school district that is found not to be complying with §§ 13-13-73.5, 13-13-73.6, or section 4 of this Act.

The School Finance Accountability Board shall promulgate rules pursuant to chapter 1-26 to establish the appeals process provided for in ~~§ 13-13-73.6~~ section 5 of this Act, and to establish the factors that may be considered in considering a waiver requested by a school district, which shall include the impact of retirements.

The Joint Committee on Appropriations or the Interim Committee on Appropriations shall review any waivers of § 13-13-73.5 ~~or,~~ 13-13-73.6, or section 4 of this Act recommended by the School Finance Accountability Board. For a waiver recommended by the board under this section, the committee may provide any suggested change to the waiver. Not more than thirty days following receipt of a suggested change from the committee, the board may amend the recommended waiver in accordance with the suggested change and shall resubmit the recommended waiver. The Joint Committee on Appropriations or the Interim Committee on Appropriations shall approve, amend, or deny any waiver recommended by the board. The Department of Education shall annually report to the Governor and the Legislature the information collected pursuant to §§ 13-8-47 and 13-13-73.6.

Section 2. That § 13-8-47 be AMENDED:

13-8-47. Before ~~the first day of~~ August first, every school board shall file an annual report with the Department of Education. The report ~~shall~~ must contain all the educational and financial information and statistics of the school district as requested in a format established by the Department of Education. The report ~~shall~~ must also contain, for each month of the fiscal year, the month-end cash balances of the school district's general fund, capital outlay fund~~, pension fund~~, and special education fund. The report ~~shall~~ must also contain the following information for the district from the preceding fiscal year:

(1) Total teacher compensation, which is defined as the total amount spent on instructional salaries and benefits for certified instructional staff;

(2) Average teacher compensation, which is calculated by dividing the total teacher compensation by the total full-time equivalence of certified instructional staff employed by the school district;

(3) The total amount spent on instructional salaries for certified instructional staff;

~~(3)~~(4) The total amount spent on benefits for certified instructional staff;

~~(4)~~(5) The total ~~number~~ full-time equivalence of certified instructional staff employed by the school district; and

~~(5)~~(6) Any other information necessary to comply with the provisions of SL 2016, ch 83.

The business manager, with the assistance of the secretary of the Department of Education, shall make the annual report, and ~~it shall~~ the report must be approved by the school board. The business manager shall sign the annual report and file a copy with the Department of Education as provided in § 13-13-37. The ~~division~~ department shall audit the report and return one copy to the school district.

Reports not filed prior to August thirtieth are considered past due and are subject to the past-due provisions of § 13-13-38.

Section 3. That § 13-13-73.6 be AMENDED:

13-13-73.6. The Department of Education shall calculate the ~~following for each school district:~~

~~(1) The~~ average teacher salary for each school district, based on data collected pursuant to §§ 13-3-51 and 13-8-47~~;~~

~~(2) The increase in local need pursuant to § 13-13-10.1, excluding any effect due to change in the school district's fall enrollment and less the amount of revenue generated in school fiscal year 2016 as a percentage increase, from fiscal year 2016 to fiscal year 2017; and~~

~~(3) The increase in average teacher compensation as a percentage increase, as defined in § 13-8-47, from fiscal year 2016 to fiscal year 2017.~~

~~For each fiscal year from 2019 to 2024, inclusive, if a district's average teacher compensation is less than the district's average teacher compensation in fiscal year 2017, state aid to general education funding to the district in the following fiscal year must be reduced by an amount equal to five hundred dollars for each teacher employed in the school district.~~

~~A school district may request a waiver from any penalty imposed under this section from the School Finance Accountability Board~~.

Beginning with fiscal year 2025 and every fiscal year thereafter, each school district must increase its average teacher compensation, as referenced in § 13-8-47, so that the cumulative increase in the average teacher compensation since fiscal year 2024 is greater than or equal to the cumulative percentage change in the target teacher salary since fiscal year 2024. A school district complies with this section if the district's average teacher compensation is at least ninety-seven percent of the average teacher compensation otherwise required by this section.

Section 4. That a NEW SECTION be added to chapter 13-13:

Beginning July 1, 2026, each school district must pay each full-time equivalent teacher a salary at least equal to the state minimum salary.

For the purposes of this section, the term "state minimum salary" is forty-five thousand dollars for fiscal year 2025. For fiscal year 2026 and thereafter, the state minimum salary is calculated by increasing the previous year's state minimum salary by the percentage change in the target teacher salary from the previous fiscal year to the current fiscal year as adopted by the legislature.

Section 5. That a NEW SECTION be added to chapter 13-13:

The Department of Education must decrease state aid to general education funding to the school district in the following fiscal year by five hundred dollars for each full-time equivalent teacher employed in the school district if:

(1) The school district does not increase the school district's average teacher compensation in accordance with § 13-13-73.6; or

(2) The school district does not pay each full-time equivalent teacher a salary at least equal to the state minimum salary as defined in section 4 of this Act.

A school district may request a waiver from any penalty imposed under this section from the School Finance Accountability Board.

Section 6. That § 13-16-26.2 be AMENDED:

13-16-26.2. Notwithstanding § 13-16-26, no school district may transfer any funds, exclusive of federal funds and wind energy tax revenue that is defined in § 13-13-10.1 and apportioned pursuant to § 10-35-21, from the general fund to the capital outlay fund, bond redemption fund, or the capital projects fund.

The authority provided by this section for the transfer of wind energy tax revenue is conditioned annually upon the district obtaining, from the Department of Education, verification that the ~~average compensation of teachers in the district, as based on the most recently approved financial report, exceeds the average compensation rate for the 2017 fiscal year~~ school district is in compliance with § 13-13-73.6 and section 4 of this Act.

The transfer of wind energy tax revenue must be made within the ten-year timeframe identified in ~~subdivision 13-13-10.1(6B)~~ § 13-13-10.1 for each new wind farm. The maximum amount a school district may transfer on an annual basis is the amount of wind energy tax revenue that is able to be retained by the district and not counted as local effort.

Notwithstanding § 13-16-6, wind energy tax revenue transferred to the capital outlay fund under the authority of this section must remain separately identified and may not thereafter be returned to the general fund.

Signed March 13, 2024

Chapter 54

(Senate Bill 212)

An Act to allow for the payment of goods or services by a school district between school board meetings in certain circumstances.

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

Section 1. That § 13-18-1 be AMENDED:

13-18-1. School funds shall be paid by the school district business manager only upon check, warrant, or electronic funds transfer approved by the school board.

A school board may authorize the payment of a claim against the school district for goods or services prior to the next board meeting if the board specifies the vendor and the maximum amount allowed for the payment.

Signed March 14, 2024

Chapter 55

(Senate Bill 2)

An Act to remove provisions for establishing a uniform method for calculating high school credit received from completing a postsecondary course.

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

Section 1. That § 13-28-37 be AMENDED:

13-28-37. Any student in grades nine, ten, eleven, or twelve may apply to an institution of higher education or a technical college as a special student in a course or courses offered at the institution of higher education or technical college. The institution of higher education or technical college shall set admission standards and tuition rates. The student shall obtain the school district's approval of the postsecondary course prior to enrolling. If the student is enrolled in a nonpublic school or a tribal school, the student must obtain approval of the postsecondary course from the nonpublic school or the tribal school prior to enrolling, and if the student is receiving alternative instruction pursuant to § 13-27-3, the student must obtain approval of the postsecondary course prior to enrolling from the provider of the alternative instruction. If approved, the student ~~shall~~ must receive full credit toward high school graduation as well as postsecondary credit for each postsecondary course. The school district shall record each course under this section on the student's transcript and shall use each course score to calculate academic standing. ~~The Board of Education Standards shall establish, through rules promulgated pursuant to chapter 1-26, a uniform method for school districts to calculate the amount of high school credit that a student receives for completing a postsecondary course.~~

If a failing final course grade is received in a postsecondary course under this section, the student receiving the failure is no longer eligible to enroll for postsecondary courses under this section absent a showing of good cause.

Signed February 5, 2024

Chapter 56

(Senate Bill 203)

An Act to expand certain privileges for individuals who hold an unrestricted enhanced concealed carry permit.

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

Section 1. That § 13-32-7 be AMENDED:

13-32-7. Any person~~, other than a law enforcement officer or school sentinel under § 13-64-1,~~ who intentionally carries, possesses, stores, keeps, leaves, places, or puts into the possession of another person, any dangerous weapon, firearm, or air gun, whether or not the firearm or air gun is designed, adapted, used, or intended to be used primarily for imitative or noisemaking purposes, on or in any public elementary or secondary school premises, vehicle, or building, or on or in any premises, vehicle, or building used or leased for public elementary or secondary school functions, whether or not any person is endangered by any action under this section, is guilty of a Class 1 misdemeanor.

~~The provisions of this~~ This section ~~do~~ does not apply to~~;~~:

(1) ~~Use~~ A law enforcement officer;

(2) An individual who has completed a school sentinel training course, in accordance with chapter 13-64;

(3) An individual who:

(a) Is twenty-one years of age or older;

(b) Holds an enhanced permit to carry a concealed pistol, issued in accordance with chapter 23-7; and

(c) Has written permission from the principal of the school or other person who has general control and supervision of the building or grounds;

(4) The use of a starting gun at an athletic event;

~~(2)~~(5) Any firearm or air gun at a:

(a) Firing range;

(b) Gun show; or

(c) Supervised school or session for training in the use of firearms; ~~or~~

~~(d) Ceremonial~~

(6) The ceremonial presence of an unloaded ~~weapons~~ weapon at a color guard ~~ceremonies~~ ceremony;

~~(3)~~(7) ~~Any~~ A nonpublic school;

~~(4)~~(8) ~~Any~~ A church or other house of worship; or

~~(5)~~(9) ~~Any~~ A nonpublic school located on the premises of a church or other house of worship.

Signed March 18, 2024

Chapter 57

(Senate Bill 198)

An Act to authorize school districts and nonpublic schools to acquire and administer nasal glucagon.

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

Section 1. That a NEW SECTION be added to chapter 13-33A:

A licensed health care professional may prescribe nasal glucagon in the name of a school district or nonpublic school for use as provided in this Act.

A licensed health care professional may then dispense or distribute nasal glucagon to an employee of the school district or nonpublic school for use as provided in this Act.

Section 2. That a NEW SECTION be added to chapter 13-33A:

A school district or nonpublic school may acquire and maintain nasal glucagon pursuant to a prescription issued by a licensed health care provider for use on a student experiencing severe hypoglycemia.

Any nasal glucagon acquired in accordance with this Act must be:

(1) Stored in a secure location, accessible by the school nurse or another employee of the school district or nonpublic school authorized in accordance with section 4 of this Act; and

(2) Maintained in accordance with the manufacturer's instructions.

Section 3. That a NEW SECTION be added to chapter 13-33A:

A school nurse, or another employee of the school district or nonpublic school authorized in accordance with section 4 of this Act, may administer nasal glucagon acquired in accordance with this Act to a student experiencing severe hypoglycemia if:

(1) The student's parent or guardian has provided documentation to the school that the student attends, from the student's physician, that the student is diagnosed with diabetes;

(2) The student's parent or guardian has consented to the administration of nasal glucagon by the school nurse or another employee of the school authorized in accordance with section 4 of this Act; and

(3) The student's prescribed glucagon is not available onsite or has expired.

Section 4. That a NEW SECTION be added to chapter 13-33A:

The board of a school district or the governing board of a nonpublic school may authorize an employee to administer nasal glucagon to a student if the employee completes training, provided by a licensed health care provider, that addresses:

(1) Recognizing the symptoms of severe hypoglycemia;

(2) The procedure for administering nasal glucagon;

(3) Emergency care for an individual experiencing severe hypoglycemia, including care after administering nasal glucagon; and

(4) The storage, maintenance, and disposal of nasal glucagon.

The school district or the nonpublic school must maintain documentation of each employee who completes the training and who is authorized to administer nasal glucagon in accordance with this Act.

Section 5. That a NEW SECTION be added to chapter 13-33A:

The following persons may not be held liable for any death, injury, or damage that results from the administration of, or the failure to administer, nasal glucagon if the action or inaction constitutes ordinary negligence:

(1) A school district or nonpublic school, and any of its employees, agents, or other personnel;

(2) A licensed health care provider who prescribes nasal glucagon in the name of a school district or nonpublic school;

(3) A licensed health care provider who dispenses or distributes nasal glucagon to an employee of a school district or nonpublic school; and

(4) A licensed health care provider who provides training on nasal glucagon to an employee of a school district or nonpublic school.

Signed March 18, 2024

Chapter 58
(House Bill 1220)

An Act to allow an appeal of a decision of the Department of Education regarding special education or related services by a civil action against the department.

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

Section 1. That a NEW SECTION be added to chapter 13-37:

Any party aggrieved by a decision of the Department of Education under this chapter may bring a civil action with respect to a due process complaint notice requesting a due process hearing under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415(i)(2) (January 1, 2024). A civil action may be filed in either state or federal court without regard to the amount in controversy. The party bringing the action has thirty days from the date of the decision to file a civil action.

Signed March 6, 2024

Chapter 59

(Senate Bill 51)

An Act to revise property tax levies for school districts and to revise the state aid to general and special education formulas.

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

Section 1. That § 10-12-42 be AMENDED:

10-12-42. For taxes payable in ~~2024~~ 2025, and each year thereafter, the levy for the general fund of a school district ~~shall be~~ is as follows:

(1) The maximum tax levy is ~~six~~ five dollars and ~~eleven and three tenths~~ fifty-four and four-tenths cents per thousand dollars of taxable valuation, subject to the limitations on agricultural property as provided in subdivision (2) of this section and owner-occupied property as provided in subdivision (3) of this section;

(2) The maximum tax levy on agricultural property for the school district is one dollar and ~~thirty two~~ nineteen and seven-tenths cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies ~~shall~~ must maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies; and

(3) The maximum tax levy for an owner-occupied single-family dwelling ~~as defined in~~ pursuant to § 10-13-40 for the school district is two dollars and ~~ninety five and four tenths~~ sixty-seven and nine-tenths cents per thousand dollars of taxable valuation. If the district's levies are less than the maximum levies as stated in this section, the levies ~~shall~~ must maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies.

All levies in this section ~~shall~~ must be imposed on valuations where the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. These valuations ~~shall~~ must be used for all school funding purposes. If the district has imposed an excess levy pursuant to § 10-12-43, the levies ~~shall~~ must maintain the same proportion to each other as represented in the mathematical relationship at the maximum levies in this section. The school district may elect to tax at less than the maximum amounts set forth in this section.

Section 2. That § 13-13-10.1 be AMENDED:

13-13-10.1. The education funding terms and procedures referenced in this chapter are defined as follows:

(1) 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) "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, and add

to that number the product of 0.10 multiplied by the number of children who participated in the prior school year in high school interscholastic activities sanctioned or sponsored by the South Dakota High School Activities Association, as permitted by § 13-36-7, while receiving alternative instruction pursuant to § 13-27-3;

(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;

(3) "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:

(i) Multiplying the fall enrollment by .00750;

(ii) Adding 10.50 to the resulting 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;

(4) "English learner (EL) adjustment," is calculated by multiplying 0.25 times the number of ~~kindergarten through twelfth grade~~ kindergarten-through-twelfth-grade students who, in the prior school year, scored below level four on the state-administered language proficiency assessment as required in the state's consolidated state application pursuant to § 1111(b)(2)(G) of the Every Student Succeeds Act of 2015. For the 2021-2022 calculation only, the EL adjustment is calculated by multiplying 0.25 times the number of ~~kindergarten through twelfth grade~~ kindergarten-through-twelfth-grade students who scored below level four on the state-administered language proficiency assessment in school year 2019-2020 or 2020-2021, whichever is greater;

(5) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(6) "Target teacher salary," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$59,659.25~~ $62,045.62. Each school fiscal year thereafter, the target teacher salary is the previous fiscal year's target teacher salary increased by the index factor;

(7) "Target teacher benefits," is the target teacher salary multiplied by twenty-nine percent;

(8) "Target teacher compensation," is the sum of the target teacher salary and the target teacher benefits;

(9) "Overhead rate," is thirty-eight and ~~seventy-eight-hundredths~~ seventy-eight-hundredths percent.

Beginning in school fiscal year 2018, the overhead rate ~~shall~~ must be adjusted to take into account the sum of the amounts that districts exceed the other revenue base amount;

(10) "Local need," is calculated as follows:

(a) Divide the fall enrollment by the target teacher ratio factor;

(b) If applicable, divide English Learner (EL) adjustment pursuant to subdivision (4) by the target teacher ratio factor;

(c) Add the results of subsections (a) and (b);

(d) Multiply the result of subsection (c) by the target teacher compensation;

(e) Multiply the product of subsection (d) by the overhead rate;

(f) Add the products of subsections (d) and (e);

(g) When calculating local need at the statewide level, include the amounts set aside for costs related to technology in schools and statewide student assessments; and

(h) When calculating local need at the statewide level, include the amounts set aside for sparse school district benefits, calculated pursuant to §§ 13-13-78 and 13-13-79;

(11) "Alternative per student need," is calculated as follows:

(a) Add the total need for each school district for school fiscal year 2016, including the small school adjustment and the English learner 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; and

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

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

(13) "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~~ includes 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 (15), 10-36-10, 10-43-77, 11-7-73, 13-13-4, and

23A-27-25 and that exceeds the other revenue base amount;

(14) "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 (15), 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 (15), 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); and

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

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

(15) "Wind energy tax revenue," any wind energy tax revenue apportioned to school districts pursuant to § 10-35-21 from a wind farm producing power for the first time before July 1, 2016, ~~shall be~~ is considered local effort pursuant to subdivision (13) and other revenue base amount pursuant to subdivision (14). However, any wind energy tax revenue apportioned to a school district from a wind farm producing power for the first time after June 30, 2016, one hundred percent ~~shall~~ must be retained by the school district to which the tax revenue is apportioned for the first five years of producing power, eighty percent for the sixth year, sixty percent for the seventh year, forty percent for the eighth year, twenty percent for the ninth year, and zero percent thereafter. If a wind farm begins producing power for the first time between October first and December thirty-first in a calendar year, any revenues generated for that time period must be retained by the school district and that time period may not be counted against the first five-year period;

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

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

(b) Divide subsection (a) by 15;

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

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

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

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

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

When determining the general fund base percentage, the secretary of the Department of Education shall use the lesser of the school district's fall enrollment as defined in subdivision (2) for the current school year or the school district's fall enrollment from the previous two years; and

(19) "Allowable general fund cash balance," the general fund base percentage multiplied by the district's general fund expenditures in the previous school year.

Section 3. That § 13-37-16 be AMENDED:

13-37-16. For taxes payable in ~~2024~~ 2025, and each year thereafter, the school board shall levy no more than one dollar and ~~fifty-seven and four-tenths~~ forty-eight and eight-tenths cents per thousand dollars of taxable valuation, as a special levy in addition to all other levies authorized by law for the amount so determined to be necessary, and the levy ~~shall~~ must be spread against all of the taxable property of the district. The proceeds derived from the levy ~~shall~~ constitute a school district special education fund of the district for the payment of costs for the special education of all children in need of special education or special education and related services who reside within the district pursuant to the provisions of §§ 13-37-8.4 to 13-37-8.10, inclusive. The levy in this section ~~shall be~~ is based on valuations ~~such that~~ where the median level of assessment represents eighty-five percent of market value as determined by the Department of Revenue. The total amount of taxes that would be generated at the levy pursuant to this section ~~shall be~~ is considered local effort. Money in the special education fund may be expended for the purchase or lease of any assistive technology that is directly related to special education and specified in a student's individualized education plan. This section does not apply to real property improvements.

Section 4. That § 13-37-35.1 be AMENDED:

13-37-35.1. Terms used in chapter 13-37 mean:

(1) "Level one disability," a mild disability;

(2) "Level two disability," cognitive disability or emotional disorder;

(3) "Level three disability," hearing impairment, deafness, visual impairment, deaf-blindness, orthopedic impairment, or traumatic brain injury;

(4) "Level four disability," autism;

(5) "Level five disability," multiple disabilities;

(5A) "Level six disability," prolonged assistance;

(6) "Index factor," is the annual percentage change in the consumer price index for urban wage earners and clerical workers as computed by the Bureau of Labor Statistics of the United States Department of Labor for the year before the year immediately preceding the year of adjustment or three percent, whichever is less;

(7) "Local effort," ~~shall~~ must be calculated for taxes payable in ~~2024~~ 2025 and thereafter using a special education levy of one dollar and ~~thirty-seven and four-tenths~~ twenty-eight and eight-tenths cents per one thousand dollars of valuation;

(8) "Allocation for a student with a level one disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$6,989.24~~ $7,556.00. For each school year thereafter, the allocation for a student with a level one disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(9) "Allocation for a student with a level two disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$16,489.77~~ $16,553.00. For each school year thereafter, the allocation for a student with a level two disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(10) "Allocation for a student with a level three disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$21,059.74~~ $22,854.00. For each school year thereafter, the allocation for a student with a level three disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(11) "Allocation for a student with a level four disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$17,099.67~~ $17,831.00. For each school year thereafter, the allocation for a student with a level four disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(12) "Allocation for a student with a level five disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$36,693.51~~ $36,582.00. For each school year thereafter, the allocation for a student with a level five disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(12A) "Allocation for a student with a level six disability," for the school fiscal year beginning July 1, ~~2023~~ 2024, is ~~$9,700.62~~ $11,692.00. For each school year thereafter, the allocation for a student with a level six disability ~~shall~~ must be the previous fiscal year's allocation for ~~such~~ the child increased by the index factor;

(13) "Child count," is the number of students in need of special education or special education and related services according to criteria set forth in rules promulgated pursuant to §§ 13-37-1.1 and 13-37-46 submitted to the Department of Education ~~in accordance with rules promulgated pursuant to § 13-37-1.1~~;

(14) "Fall enrollment," the number of ~~kindergarten through twelfth grade~~ kindergarten-through-twelfth-grade students enrolled in all schools operated by the school district on the last Friday of September of the previous school year minus the number of students for whom the district receives tuition, except any nonresident student who is in the care and custody of a state agency and is attending a public school and any student for whom tuition is being paid pursuant to § 13-28-42.1, plus the number of students for whom the district pays tuition;

(15) "Nonpublic school," a sectarian organization or entity ~~which is~~ accredited by the secretary of education for the purpose of instructing children of compulsory school age. This definition excludes any school that receives a majority of its revenues from public funds;

(16) "Nonpublic fall enrollment," the number of children under age eighteen, who are approved for alternative instruction pursuant to §~~13-27-2~~ 13-27-3 on the last Friday of September of the previous school year plus:

(a) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of six hundred or more on the last Friday of September of the previous school year, the number of ~~kindergarten through twelfth grade~~ kindergarten-through-twelfth-grade students enrolled on the last Friday of September of the previous regular school year in all nonpublic schools located within the boundaries of the public school district;

(b) For nonpublic schools located within the boundaries of a public school district with a fall enrollment of less than six hundred on the last Friday of September of the previous school year, the number of resident ~~kindergarten through twelfth grade~~ kindergarten-through-twelfth-grade students enrolled on the last Friday of September of the previous school year in all nonpublic schools located within ~~the State of South Dakota~~ this state;

(17) "Special education fall enrollment," fall enrollment plus nonpublic fall enrollment;

(18) "Local need," an amount to be determined as follows:

(a) Multiply the special education fall enrollment by ~~0.1072~~ 0.1062 and multiply the result by the allocation for a student with a level one disability;

(b) Multiply the number of students having a level two disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level two disability;

(c) Multiply the number of students having a level three disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level three disability;

(d) Multiply the number of students having a level four disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level four disability;

(e) Multiply the number of students having a level five disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level five disability;

(f) Multiply the number of students having a level six disability as reported on the child count for the previous school fiscal year by the allocation for a student with a level six disability;

(g) When calculating local need at the statewide level, include the amount set aside for extraordinary costs defined in § 13-37-40;

(h) When calculating local need at the statewide level, include the amount set aside for the South Dakota School for the Blind and Visually Impaired;

(i) Sum the results of ~~(a)~~ subdivisions (18)(a) to (h), inclusive;

(19) "Effort factor," the school district's special education tax levy in dollars per thousand divided by ~~$1.374~~ $1.288. The maximum effort factor is 1.0.

Signed March 18, 2024

Chapter 60

(House Bill 1187)

An Act to create a one-year career and technical education instructor educator permit.

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

Section 1. That chapter 13-42 be amended with a NEW SECTION:

The secretary may issue a one-year career and technical education (CTE) instructor educator permit to an applicant who submits documentation showing that the applicant holds a minimum of a high school diploma or its equivalent and:

(1) An associate of applied science degree or higher; or

(2) At least two thousand hours of work experience in a related CTE field; or

(3) A national or state certification in a related CTE field.

An individual who holds an active one-year CTE instructor educator permit is considered certified pursuant to this chapter.

The applicant must submit documentation from a public or department-accredited school showing that the school is unable to hire a certified educator to fill the vacancy and listing the position to be held by the applicant and the name of the certified teacher who will act as a mentor to the applicant. The applicant must submit the required documentation on forms approved by the secretary.

The South Dakota Board of Education Standards shall promulgate rules, pursuant to chapter 1-26, establishing the process by which an applicant may apply for the one-year CTE instructor educator permit, the CTE career pathway endorsements that the applicant for the one-year CTE instructor educator permit is eligible to add to the permit, and what continuing education an individual must complete to renew the one-year CTE instructor educator permit. The educator permit may not be renewed for more than one year at a time.

Signed March 13, 2024

Chapter 61

(House Bill 1020)

An Act to revise the method by which completion of a required suicide awareness and prevention training is verified.

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

Section 1. That § 13-42-71 be AMENDED:

13-42-71. ~~The South Dakota Board of Education Standards shall promulgate rules, pursuant to chapter 1-26, to include a minimum of one hour of suicide awareness and prevention training as a requirement that an applicant must meet in order to be issued an initial certificate and a renewal certificate as a teacher, administrator, or other educational professional~~Prior to beginning employment at a school district or department-accredited school and every five years thereafter, an individual certified pursuant to this chapter and employed by a school district or department-accredited school must complete an approved youth suicide awareness and prevention training that is at least one hour in duration and shall submit a certificate showing completion of the approved training to the school district or department-accredited school where the individual is employed. The school district or department-accredited school shall retain the certificates submitted as a part of the documentation necessary to earn or maintain state accreditation.

The ~~board~~ South Dakota Board of Education Standards shall~~, after consultation~~ consult with suicide prevention or counseling experts~~,~~ to identify evidence-based resources that will fulfill the youth suicide awareness and prevention training ~~requirement~~ required by this section and shall make the list of the ~~resources~~ approved trainings available to school districts~~. The~~ and department-accredited schools. An individual may complete a required training ~~required may be accomplished~~ through a self-review of youth suicide prevention materials that ~~meet the guidelines developed~~ are approved by the board~~. The requirement for suicide awareness and prevention training for initial certification or to renew a certificate begins after July 1, 2017~~, provided that the training issues a certificate of completion that contains:

(1) The name of the training completed;

(2) The name of the individual who completed the training;

(3) The length of the training completed; and

(4) The date on which the training was completed.

Signed February 5, 2024

Chapter 62

(House Bill 1178)

An Act to prohibit the Board of Regents or any institution under its control from using state resources for obscene live conduct.

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

Section 1. That a NEW SECTION be added to chapter 13-53:

The Board of Regents and any institution under its control may not:

(1) Authorize the use of any state-owned facility or property to develop, implement, facilitate, host, or promote any obscene live conduct; or

(2) Expend any public moneys in support of obscene live conduct.

For purposes of this section, the term "obscene live conduct" has the meaning given in § 22-24-27.

Signed March 13, 2024

Chapter 63

(House Bill 1211)

An Act to repeal the Midwestern Regional Higher Education Compact.

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

Section 1. That § 13-53C-1 be REPEALED.

~~The Governor is hereby authorized and directed to enter the Midwestern Regional Higher Education Compact on behalf of the State of South Dakota with all other states legally joining therein in substantially the following form:~~

~~MIDWESTERN REGIONAL HIGHER EDUCATION COMPACT~~

~~ARTICLE I PURPOSE~~

~~The purpose of the Midwestern Higher Education Compact is to provide greater higher education opportunities and services in the midwestern region, with the aim of furthering regional access to, research in, and choice of higher education for the citizens residing in the several states which are parties to this compact.~~

~~ARTICLE II THE COMMISSION~~

~~The compacting states create the Midwestern Higher Education Commission. The commission shall be a body corporate of each compacting state. The commission shall have all the responsibilities, powers, and duties set forth in this chapter, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.~~

~~The commission shall consist of five resident members of each state as follows: the governor or the governor's designee, who shall serve during the tenure of office of the governor; two legislators, one from each house (except Nebraska, which may appoint two legislators from its unicameral legislature), who shall serve two-year terms and be appointed by the appropriate appointing authority in each house of the legislature; and two other at-large members, at least one of whom shall be selected from the field of higher education. The at-large members shall be appointed in a manner provided by the laws of the appointing state. One of the two at-large members initially appointed in each state shall serve a two-year term. The other, and any regularly appointed successor to either at-large member, shall serve a four-year term. All vacancies shall be filled in accordance with the laws of the appointed states. Any commissioner appointed to fill a vacancy shall serve until the end of the incomplete term.~~

~~The commission shall select annually, from among its members, a chairperson, a vice-chairperson, and a treasurer.~~

~~The commission shall appoint an executive director who shall serve at its pleasure and who shall act as secretary to the commission. The treasurer, the executive director, and such other personnel as the commission may determine shall be bonded in such amounts as the commission may require.~~

~~The commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a majority of the commission members of three or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.~~

~~Each compacting state represented at any meeting of the commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the commission.~~

~~ARTICLE III POWERS AND DUTIES OF THE COMMISSION~~

~~The commission shall adopt a seal and suitable bylaws governing its management and operations.~~

~~Irrespective of the civil service, personnel, or other merit system laws of any of the compacting states, the commission in its bylaws shall provide for the personnel policies and programs of the compact.~~

~~The commission shall submit a budget to the governor and legislature of each compacting state at such time and for such period as may be required. The budget shall contain specific recommendations of the amount or amounts to be appropriated by each of the compacting states.~~

~~The commission shall report annually to the legislatures and governors of the compacting states, to the Midwestern Governors' Conference, and to the Midwestern Legislative Conference of the Council of State Governments concerning the activities of the commission during the preceding year. Such reports shall also embody any recommendations that may have been adopted by the commission.~~

~~The commission may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency, from any interstate agency, or from any institution, foundation, person, firm, or corporation.~~

~~The commission may accept for any of its purposes and functions under the compact any and all donations and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, foundation, person, firm, or corporation, and may receive, utilize, and dispose of the same.~~

~~The commission may enter into agreements with any other interstate education organizations or agencies and with higher education institutions located in nonmember states and with any of the various states of these United States to provide adequate programs and services in higher education for the citizens of the respective compacting states. The commission shall, after negotiations with interested institutions and interstate organizations or agencies, determine the cost of providing the programs and services in higher education for use of these agreements.~~

~~The commission may establish and maintain offices, which shall be located within one or more of the compacting states.~~

~~The commission may establish committees and hire staff as it deems necessary for the carrying out of its functions.~~

~~The commission may provide for actual and necessary expenses for attendance of its members at official meetings of the commission or its designated committees.~~

~~ARTICLE IV ACTIVITIES OF THE COMMISSION~~

~~The commission shall collect data on the long-range effects of the compact on higher education. By the end of the fourth year from the effective date of the compact and every two years thereafter, the commission shall review its accomplishments and make recommendations to the governors and legislatures of the compacting states on the continuance of the compact.~~

~~The commission shall study issues in higher education of particular concern to the midwestern region. The commission shall also study the needs for higher education programs and services in the compacting states and the resources for meeting such needs. The commission shall from time to time prepare reports on such research for presentation to the governors and legislatures of the compacting states and other interested parties. In conducting such studies, the commission may confer with any national or regional planning body. The commission may redraft and recommend to the governors and legislatures of the various compacting states suggested legislation dealing with problems of higher education.~~

~~The commission shall study the need for provision of adequate programs and services in higher education, such as undergraduate, graduate, or professional student exchanges in the region. If a need for exchange in a field is apparent, the commission may enter into such agreements with any higher education institution and with any of the compacting states to provide programs and services in higher education for the citizens of the respective compacting states. The commission shall, after negotiations with interested institutions and the compacting states, determine the costs of providing the programs and services in higher education for use in its agreements. The contracting states shall contribute the funds not otherwise provided, as determined by the commission, for carrying out the agreements. The commission may also serve as the administrative and fiscal agent in carrying out agreements for higher education programs and services.~~

~~The commission shall serve as a clearinghouse on information regarding higher education activities among institutions and agencies.~~

~~In addition to the activities of the commission previously noted, the commission may provide services and research in other areas of regional concern.~~

~~ARTICLE V FINANCE~~

~~The moneys necessary to finance the general operations of the commission, not otherwise provided for, in carrying forth its duties, responsibilities, and powers as stated herein shall be appropriated to the commission by the compacting states, when authorized by the respective legislatures, by equal apportionment among the compacting states.~~

~~The commission shall not incur any obligations of any kind prior to the making of appropriations adequate to meet the same; nor shall the commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.~~

~~The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited~~

~~yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.~~

~~The accounts of the commission shall be open at any reasonable time for inspection by duly authorized representatives of the compacting states and persons authorized by the commission.~~

~~ARTICLE VI ELIGIBLE PARTIES AND ENTRY INTO FORCE~~

~~The states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin shall be eligible to become party to this compact. Additional states will be eligible if approved by a majority of the compacting states.~~

~~As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law.~~

~~Amendments to the compact shall become effective upon their enactment by the legislatures of all compacting states.~~

~~ARTICLE VII WITHDRAWAL, DEFAULT, AND TERMINATION~~

~~Any compacting state may withdraw from this compact by enacting a statute repealing the compact, but such withdrawal shall not become effective until two years after the enactment of such statute. A withdrawing state shall be liable for any obligations which it may have incurred on account of its party status up to the effective date of withdrawal, except that if the withdrawing state has specifically undertaken or committed itself to any performance of an obligation extending beyond the effective date of withdrawal, it shall remain liable to the extent of such obligation.~~

~~If any compacting state shall at any time default in the performance of any of its obligations, assumed or imposed, in accordance with the provisions of this compact, all rights, privileges, and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission, and the commission shall stipulate the conditions and maximum time for compliance under which the defaulting state may resume its regular status. Unless such default shall be remedied under the stipulations and within the time period set forth by the commission, this compact may be terminated with respect to such defaulting state by affirmative vote of a majority of the other member states. Any such defaulting state may be reinstated by performing all acts and obligations as stipulated by the commission.~~

~~ARTICLE VIII SEVERABILITY AND CONSTRUCTION~~

~~The provisions of this compact entered into hereunder shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution of any compacting state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact entered into hereunder shall be held contrary to the constitution of any compacting state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.~~

Section 2. That § 13-53C-2 be REPEALED.

~~The members of the Midwestern Regional Higher Education Commission representing this state are as follows:~~

~~(1) The Governor or a designee of the Governor who shall serve throughout the Governor's tenure in office;~~

~~(2) One member of the Senate appointed by the Executive Board of the Legislative Research Council;~~

~~(3) One member of the House of Representatives appointed by the Executive Board of the Legislative Research Council;~~

~~(4) One member of the general public from the field of higher education appointed by the executive director of the Board of Regents; and~~

~~(5) One member of the general public from the field of career and technical education appointed by the secretary of the Department of Education.~~

~~The members of the Legislature appointed to the commission shall each serve a term of two years. The members of the general public appointed to the commission shall each serve a term of four years, except that one of the members of the general public initially appointed shall serve a term of two years.~~

~~The initial appointments shall be made no later than thirty days after the effective date of this chapter. If a vacancy occurs, the remainder of the unexpired term shall be filled in the same manner as the original appointment.~~

Signed March 14, 2024

Chapter 64

(Senate Bill 1)

An Act to expand eligibility for the reduced tuition benefit for certain school district and Head Start employees at Board of Regents institutions to school counselors.

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

Section 1. That § 13-55-24 be AMENDED:

13-55-24. A teacher ~~or~~, vocational instructor ~~who is required to take college courses as a condition of employment, or to maintain a certificate to teach,~~may, upon compliance with~~,~~ or school counselor, who meets the requirements of § 13-55-27 and section 5 of this Act, and all of the requirements for admission, may attend and pursue any undergraduate or graduate course in any institution under the control and management of the Board of Regents upon the payment of fifty percent of tuition and one hundred percent of required fees. If the teacher, vocational instructor, or school counselor enrolls in a distance education course under the control and management of the Board of Regents or other course under the control and management of the Board of Regents that is not subsidized by the general fund, the teacher, instructor, or counselor is entitled to a benefit of fifty percent of the tuition to be paid to the institution by the Board of Regents based on the in-state resident tuition rate.

The Board of Regents shall maintain an annual record of the number of participants and the tuition dollar value of such participation.

Section 2. That § 13-55-25 be AMENDED:

13-55-25. A teacher ~~or,~~ vocational instructor, or school counselor is eligible for the reduced tuition amount provided for in ~~§ 13-55-26~~ § 13-55-24 for a maximum of six credit hours per year.

Section 3. That § 13-55-26 be AMENDED:

13-55-26. The right of any teacher ~~or,~~ vocational instructor, or school counselor to participate in the reduced tuition program under §§ 13-55-24 to 13-5-28, inclusive, is limited to the space available, as determined by the course instructor, in any course, after all of the full-time or full tuition paying students have registered.

Section 4. That § 13-55-27 be AMENDED:

13-55-27. To be eligible for the reduced tuition benefit under §§ 13-55-24 to 13-55-28, inclusive, ~~a teacher or vocational instructor~~ an individual must:

(1) Be a bona fide resident of the state ~~and employed as a teacher by a:~~;

(2) Be employed or contracted by a school district or Head Start program in this state as a:

(a) ~~School district~~Teacher;

(b) ~~Accredited school~~Vocational instructor; or

(c) ~~Head start program~~School counselor; and

~~(2) Maintain an average academic grade of 3.0 or better;~~

(3) Be required by state law, administrative rules, or an employment contract to attend college ~~as a~~:

(a) As a condition of employment ~~or to maintain~~;

(b) To maintain a certificate to teach; ~~and~~ or

(c) To maintain certification as a school counselor

~~(4) Present certification to the Board of Regents from the teacher's employer that the teacher meets the requirements of this section~~.

To remain eligible, an individual must earn an average academic grade of 3.0 or better in any course the tuition benefit is used for.

Section 5. That chapter 13-55 be amended with a NEW SECTION:

To apply for the reduced tuition benefit, a teacher, vocational instructor, or school counselor shall:

(1) Submit an application, developed by the Board of Regents, to the institution at which the individual intends to register for the course; and

(2) Present certification, with the application, from the individual's employer that the individual meets the eligibility requirements of § 13-55-27.

Section 6. That § 13-55-28 be AMENDED:

13-55-28. No benefits may accrue under §§ 13-55-24 to 13-55-27, inclusive, and section 5 of this Act, if a teacher ~~or~~, vocational instructor, or school counselor is entitled to other reduced tuition benefits by law.

Signed March 13, 2024

Chapter 65

(House Bill 1003)

An Act to update a reference to the Internal Revenue Code for purposes of higher education savings plans.

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

Section 1. That § 13-63-1 be AMENDED:

13-63-1. Terms used in this chapter mean:

(1) "Account," an account established as prescribed in this chapter;

(2) "Account owner," the person who, under this chapter or rules promulgated by the council pursuant to chapter 1-26, is entitled to select or change the designated beneficiary of an account, to designate any person other than the designated beneficiary to whom funds may be paid from the account, or to receive distributions from the account if no such other person is designated;

(3) "Cash," currency, bills, and coins in circulation. A negotiable instrument may be converted to cash if properly endorsed and presented to a financial institution for deposit. An automatic transfer, cashier's check, certified check, money order, payroll deposit, traveler's check, personal check, and wire transfer may also be converted to cash if presented to a financial institution for deposit;

(4) "Contribution," any payment directly allocated to an account for the benefit of a designated beneficiary or used to pay late fees or administrative fees associated with an account, and that portion of any rollover amount treated as a contribution under section 529 of the Internal Revenue Code;

(5) "Contributor," any person making a contribution to an account;

(6) "Council," the South Dakota Investment Council;

(7) "Designated beneficiary," except as provided in § 13-63-25, the individual designated at the time the account is opened as the individual whose higher education expenses are expected to be paid from the account or, if this designated beneficiary is replaced in accordance with § 13-63-12, 13-63-13, or 13-63-14, the replacement beneficiary;

(8) "Eligible education institution," as defined in section 529(e)(5) of the Internal Revenue Code;

(9) "Financial institution," any bank, commercial bank, national bank, savings bank, savings and loan association, credit union, an insurance company, brokerage firm, or other similar entity that is authorized to do business in this state;

(10) "Investment direction," specifying or attempting to specify the particular financial instruments or ownership interests either individually, or within a fund family or other group of financial instruments or ownership interests held as an investment group, into which the contributions or earnings are invested. Selecting an initial type of investment program if more than one program is offered does not constitute an investment direction;

(11) "Internal Revenue Code," the United States Internal Revenue Code, as amended and in effect on January 1, ~~2023~~ 2024;

(12) "Member of the family," as defined in section 529(e)(2) of the Internal Revenue Code;

(13) "Person," an individual, a corporation, a partnership, a trust or estate, a joint-stock company, an association, or a syndicate, group, pool, joint venture, or other unincorporated organization or group;

(14) "Program," the higher education savings program established under this chapter;

(15) "Program manager," any financial institution selected by the council to act as the depository and manager for an account;

(16) "Qualified higher education expenses," as defined in section 529(e)(3) of the Internal Revenue Code;

(17) "Qualified tuition program," as defined in section 529(b) of the Internal Revenue Code; and

(18) "Rollover," a disbursement or transfer from an account of a designated beneficiary that is transferred to or deposited within sixty days into an account of the same designated beneficiary or another individual who is a member of the family of the designated beneficiary, if the transferee account was created under this chapter or under a qualified tuition program maintained by another state in accordance with section 529 of the Internal Revenue Code, or any other rollover allowed by section 529 of the Internal Revenue Code.

Signed February 5, 2024

Chapter 66

(Senate Bill 94)

An Act to amend provisions pertaining to the partners in education tax credit program.

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

Section 1. That § 13-65-1 be AMENDED:

13-65-1. Terms, as used in this chapter, mean:

(1) "Certified enrollment," the K-12 enrollment data required to be submitted to the Department of Education by an accredited school by October fifteenth of each year and published by the department on the department's website;

(2) "Division," the Division of Insurance in the Department of Labor and Regulation;

~~(2)~~(3) "Educational scholarship," a grant to an eligible student to cover all or part of the tuition and fees at a qualifying school. The average value of all scholarships awarded by a scholarship granting organization may not exceed eighty-two and five-tenths percent of the state's share of the per student equivalent, as defined in § 13-13-10.1;

~~(3)~~(4) "Eligible student," any student entering kindergarten through twelfth grade who resides in South Dakota while receiving the educational scholarship and:

(a) Is a member of a household whose total annual income, the year before the student enters the program, did not exceed one hundred fifty percent of the income standard used to qualify for a free or reduced-price lunch under the national free or reduced-price lunch program. If sufficient funding is available, once a student meets the initial income eligibility requirement, the student remains income eligible for three years or if the student is entering high school, until the student graduates high school regardless of household income. After the initial period of income eligibility, a student remains eligible if the student is a member of a household whose total annual income in the prior year did not exceed two hundred percent of the income standard used to qualify for a free or reduced-price lunch; or

(b) Is in foster care;

~~(4)~~(5) "Low-income eligible student," any student who is a member of a household whose total annual income, the year before the student enters the program, did not exceed one hundred percent of the income standard used to qualify for a free or reduced-price lunch under the national free or reduced-price lunch program;

~~(5)~~(6) "Parent," any guardian, custodian, or other person with authority to act in place of a parent for the child;

~~(6)~~(7) "Program," the partners in education tax credit program established pursuant to this chapter;

~~(7)~~(8) "Qualifying school," any nonpublic school that operates within the boundaries of South Dakota or any tribally controlled school on a federally recognized Indian reservation that operates within the boundaries of South Dakota, is accredited by the Department of Education, provides education to elementary or secondary students, and has notified a scholarship granting organization of its intention to participate in the program and comply with the program requirements. This term excludes any school that receives a majority of its revenues from public funds;

~~(8)~~(9) "Scholarship granting organization," a nonprofit organization that complies with the requirements of the program and provides educational scholarships to students.

Section 2. That § 13-65-4 be AMENDED:

13-65-4. Each scholarship granting organization shall:

(1) Annually notify the division of its intent to provide educational scholarships to eligible students attending qualifying schools;

(2) Demonstrate to the division that it has been granted exemption from the

federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code;

(3) Distribute periodic scholarship payments from the educational scholarship fund account as checks made out to an eligible student's parent and mailed to the qualifying school where the eligible student is enrolled. The parent shall endorse the check before it may be deposited;

(4) Annually collect written documentation, from each qualifying school that accepts educational scholarship payments, verifying the school is accredited by the Department of Education;

(5) Provide a ~~division approved~~ division-approved receipt to companies for contributions made to the scholarship granting organization;

(6) Ensure that at least ninety percent of its revenue from contributions is spent on educational scholarships, and that all revenue from interest or investments is spent on scholarships;

(7) Carry forward no more than twenty-five percent of its revenue from contributions in the educational scholarship fund account from the fiscal year in which they were received to the next fiscal year. Contributions that are not carried forward ~~shall~~ must be remitted to the division;

(8) Submit to the division the names and addresses of all board members and documentation validating that criminal background checks have been conducted on all of its employees and board members, and exclude any employee or board member from employment or governance who might reasonably pose a risk to the appropriate use of contributed funds;

(9) Ensure that scholarships are portable during the school year and can be used at any qualifying school to which the scholarship granting organization grants scholarships and that accepts the eligible student according to a parent's wishes. If a student moves to a new qualifying school during a school year, the scholarship amount may be prorated; ~~and~~

(10) Report to the division by June first of each year the following information, prepared by a certified public accountant, regarding its contributions in the previous calendar year and the scholarship awards in the current fiscal year:

(a) The name and address of each contributing company;

(b) The total number and total dollar amount of contributions received from each company; and

(c) The total number and total dollar amount of educational scholarships awarded to eligible students, the total number and total dollar amount of educational scholarships awarded to low-income eligible students, and the percentage of first-time recipients of educational scholarships who were enrolled in a public school in the prior school year;

(11) Report to the division by December fifteenth of each year, in a format prescribed by the director, information regarding schools entering into participation agreements with the scholarship granting organization, including school names and school certified enrollment as provided by the Department of Education on the Department of Education's website;

(12) Maintain a board that consists of at least five members, each of whom must be a resident of this state; and

(13) Maintain and staff a physical location in the state to meet with and provide service to qualifying schools.

Any donation received that is not awarded a tax credit pursuant to § 13-65-2 is not subject to subdivisions (5) to (7), inclusive, of this section.

Section 3. That a NEW SECTION be added to chapter 13-65:

A qualifying school electing to accept scholarships from a scholarship granting organization may only enter into a participation agreement with one scholarship granting organization each school year. A participation agreement for the next school year must be completed each year by November fifteenth.

To be eligible for a premium tax credit for contributions to a scholarship granting program pursuant to this chapter, the scholarship granting organization must have entered into a participation agreement with at least twenty percent of the qualifying schools in the state.

Section 4. That a NEW SECTION be added to chapter 13-65:

The division shall calculate the maximum allowable contributions eligible for a premium tax credit for each scholarship granting organization for each fiscal year by:

(1) Dividing the total certified enrollment of all qualifying schools in a participation agreement with the scholarship granting organization in the previous school year by the total certified enrollment of all qualifying schools in participation agreements with all scholarship granting organizations in the previous school year; and

(2) Multiplying the result of subdivision (1) by the total available tax credits provided in § 13-65-3.

Section 5. That a NEW SECTION be added to chapter 13-65:

The division shall authorize the maximum allowable allocation of tax credits for each scholarship granting organization pursuant to section 4 of this Act for each calendar year, by January first of each calendar year.

Section 6. That § 13-65-11 be AMENDED:

13-65-11. ~~The tax credit provided for in this chapter may be first claimed on the annual premium tax return filed in 2017.~~ For the 2024-2025 school year and 2025 fiscal year tax credits, each scholarship granting organization shall:

(1) File the report required by § 13-65-4 by July 1, 2024; and

(2) Complete all participation agreements required by section 3 of this Act by July 1, 2024.

The division shall authorize the 2024 maximum allowable tax credit for each scholarship granting organization on July 1, 2024, for fiscal year 2025, using the certified enrollment from the 2023-2024 school year.

Signed February 27, 2024

Chapter 67

(Senate Bill 72)

An Act to increase the annual limit of tax credits that an insurance company may claim through the partners in education tax credit program.

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

Section 1. That § 13-65-3 be AMENDED:

13-65-3. Notwithstanding the provisions of § 13-65-2, the total amount of tax credits claimed on annual premium tax returns pursuant to this chapter may not exceed ~~three~~ five million ~~five hundred thousand~~ dollars in fiscal year ~~2023~~ 2025 and each year thereafter.

Signed March 13, 2024

COURTS AND JUDICIARY

Chapter 68

(House Bill 1023)

An Act to provide immunity from liability for certain actions of the State Bar and its agents.

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

Section 1. That chapter 16-17 be amended with a NEW SECTION:

The provisions of §§ 47-23-2, 47-23-2.1, and 47-23-27 to 47-23-32, inclusive, apply to the employees, officers, commissioners, committee members, agents, and volunteers of the State Bar, as applicable.

Section 2. That chapter 16-17 be amended with a NEW SECTION:

The State Bar, its employees, officers, commissioners, committee members, agents, and volunteers are immune from liability for any good faith act or omission done in the discharge of any duty of the State Bar prescribed by law. The immunity provided in this section does not apply to any person causing personal injury or wrongful death resulting from the negligent operation of a motor vehicle.

Signed February 27, 2024

NOTICE AND PUBLICATION

Chapter 69
(Senate Bill 75)

An Act to modify provisions pertaining to the designation of a legal newspaper.

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

Section 1. That § 17-2-2.2 be AMENDED:

17-2-2.2. A legal newspaper shall, for at least one year prior to publication of legal and official notices, ~~maintain~~ be intended for distribution and circulation to the general public, without regard to business, trade, or profession, and must either:

(1) Maintain a definite price of not less than fifty percent of its published price, ~~and shall~~ be paid for by no less than fifty percent of those to whom it is distributed~~. Such legal newspaper shall~~, and have a minimum paid circulation of at least two hundred ~~and be intended for distribution and circulation to the general public, without regard to business, trade, or profession~~; or

(2) Maintain a minimum of two hundred paid online subscribers and distribute an associated print edition at least once a week for at least fifty weeks per year with a circulation of at least five hundred copies, regardless of whether the print edition is made available to the public for a paid subscription or for free.

Section 2. That § 17-2-2.3 be AMENDED:

17-2-2.3. A legal newspaper shall contain reports of local happenings of recent occurrences of a varied nature, such as political, social, moral, and religious subjects and miscellaneous reading matter~~, and for~~. For at least one year prior to publication of legal and official notices, a newspaper must devote at least twenty-five percent of its total column space in at least one-half of its issues in any calendar year to ~~such~~ nonpaid news content. No more than eighty percent of the space devoted to ~~such~~ nonpaid news content may duplicate any other publication, unless the duplicated material is from recognized general news services.

Section 3. That § 17-2-2.4 be AMENDED:

17-2-2.4. A legal newspaper shall, for at least one year prior to publication of legal and official notices, maintain a known office of publication in the community where its mailing permit of original entry is issued or where its principal office is located as stated on the annual report filed with the secretary of state, for the purpose ~~of gathering news, soliciting advertising, and conducting general newspaper business for at least eight normal business hours per week. The terms, printed or published, mean that the newspaper is published where it maintains its known office of publication as described in this section~~ of publishing a newspaper. No newspaper may have more than one place where it is published at the same time.

For the purposes of this section the term "publish" means the process by which news may be gathered, advertising solicited, and general newspaper business conducted for at least eight normal business hours per week.

Section 4. That § 17-2-2.5 be AMENDED:

17-2-2.5. In order to maintain legal newspaper status, the newspaper ~~shall publish and~~ must submit to the secretary of state before January first of each year a sworn statement of ownership and total print and online circulation for the previous calendar year, on forms prescribed by the secretary of state.

~~Continuous publication within the meaning of this section and §§ 17-2-2.1 to 17-2-2.4, inclusive, is not deemed to be interrupted by any involuntary suspension of publication resulting from loss, destruction, failure, or unavailability of operating facilities, equipment, or personnel from any cause, and any newspaper so affected is not disqualified as a legal newspaper if publication is resumed within one week after it again becomes possible. This section and §§ 17-2-2.1 to 17-2-2.4, inclusive, do not disqualify as a legal newspaper any publication which, prior to January 1, 1985, was a legal newspaper, so long as it continues to meet the requirements under which it previously qualified.~~Between September first and December thirty-first of each year, a legal newspaper must publish either:

(1) A United States Postal Service periodicals-class statement of ownership and circulation; or

(2) The most recent sworn statement by a recognized independent circulation auditing agency verifying the total print and online circulation.

For the purposes of subdivision (2), a newspaper designated as an official legal newspaper by a public agency for the purpose of publication of legal and official notices must complete the independent audit annually. For a newspaper that has not been designated as an official legal newspaper by any public agency, an independent audit shall have been completed within two years prior to being designated as an official legal newspaper by any public agency.

Section 5. That chapter 17-2 be amended with a NEW SECTION:

The publication requirements listed in §§ 17-2-2.1 to 17-2-2.5, inclusive, are not deemed to be interrupted by any involuntary suspension of publication resulting from loss, destruction, failure, or unavailability of operating facilities, equipment, or personnel from any cause, and any newspaper so affected is not disqualified as a legal newspaper if publication is resumed within one week after it again becomes possible. This section and §§ 17-2-2.1 to 17-2-2.5, inclusive, do not disqualify as a legal newspaper any publication which, prior to January 1, 1985, was a legal newspaper, so long as it continues to meet the requirements under which it previously qualified. A newspaper may use activity occurring prior to July 1, 2024, to satisfy the requirements of chapter 17-2.

Signed February 12, 2024

Chapter 70

(Senate Bill 152)

An Act to establish maximum fees for legal publications and to remove related rule-making authority from the Bureau of Administration.

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

Section 1. That § 17-2-19 be AMENDED:

17-2-19. If any legal publication ~~of anything~~ is required or allowed by law, and no other fee is prescribed for that publication, ~~the Bureau of Administration shall establish, by rules promulgated pursuant to chapter 1-26, the maximum fee which may be charged for the publication. The bureau shall annually review and adjust rates to reflect changes in economic conditions within the newspaper industry and the general economy. The bureau shall consult with representatives of the daily and weekly newspaper industry and with representatives of local units of governments.~~ the maximum fee that may be charged for the publication is:

(1) If the legal newspaper has a paid circulation of less than nine thousand, 35.5 cents per line for eight-point type, and 31.4 cents per line for nine-point type, for a column width of eleven picas. If column widths vary, the rate per line is adjusted based on the percentage of space used. Tabular matter with one justification is charged at one and one-half times the rates set in this subdivision, and tabular matter with two justifications or more at twice the rates; and

(2) If the legal newspaper has a paid circulation of nine thousand or more:

Newspaper circulation	Rate per column inch, six-point type
9,000 – 19,999	$6.23
20,000 – 29,999	$6.54
30,000 – 39,999	$6.87
40,000 and over	$7.36

Beginning July 1, 2025, and again on each July first thereafter, the maximum rates described in this section are to increase by either two percent or the index factor described in § 10-13-38, whichever is less. The commissioner of the Bureau of Administration or its designee shall publish the adjusted rates for the following year in the South Dakota Register by December fifteenth each year, which are effective on July first of the following year.

Signed March 4, 2024

Chapter 71

(Senate Bill 211)

An Act to revise notarial acts.

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

Section 1. That § 7-9-7.4 be AMENDED:

7-9-7.4. Unless otherwise provided by law, a paper document that is to be recorded or filed in the register of deeds' records as provided in this section or other applicable law ~~shall~~ must contain the original signatures of the parties who execute the document and, if required to be acknowledged or further proven, original signatures of the notary public, witnesses, or other officer taking an acknowledgment. ~~However, any~~ Any financing statement filed and recorded

pursuant to chapter 57A-9 ~~does~~ is not ~~need~~ required to contain~~:~~

~~(1) The signatures~~ the signature of the debtor or the secured party~~;~~ or

~~(2) An~~ an acknowledgment.

No original signature ~~may be~~ is required for any document to be recorded or filed in the register of deeds' records if the document ~~is~~:

(1) Is attached as an exhibit to an affidavit or other document that has an original signature that is acknowledged, sworn to with a proper jurat, or proved according to law~~.~~;

(2) Contains electronic signatures executed and notarized in accordance with the requirements of section 4 of this Act and is recorded electronically pursuant to chapter 7-9A; or

(3) Is a printed copy of an electronic record containing electronic signatures executed and notarized in accordance with the requirements of section 4 of this Act and a certificate acknowledging the authenticity of the copy pursuant to section 7 of this Act.

Section 2. That § 18-1-1.1 be AMENDED:

18-1-1.1. Terms in this chapter mean:

(1) "Acknowledgment," a declaration by a person before a notarial officer that the person has signed a document for the purpose stated in the document and~~, if~~ that the document is signed by a representative who is:

(a) An authorized officer, agent, partner, trustee, or other representative of a person other than a natural person;

(b) A public officer, personal representative, guardian, or other representative in the capacity stated in a document;

(c) An attorney-in-fact for a natural person; or

(d) An authorized representative of another person in any other capacity, that the representative signed the document with proper authority and signed it as the act of the person identified in the document;

(2) "Document" or "record," information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

(3) "Identity proofing," a process or service by which a third party provides a notarial officer with a reasonable means to verify the identity of an individual by review of personal information from public or proprietary data sources;

(4) "Notarial act," an act, whether performed with respect to a tangible or electronic record, that a notarial officer may perform under the laws of this state. The term includes taking an acknowledgment, administering an oath or affirmation, taking a verification on oath or affirmation, witnessing or attesting a signature, certifying or attesting a copy, and noting a protest of a negotiable instrument;

~~(3)~~(5) "Notarial officer," a notary public or other person authorized to perform a notarial act;

~~(4)~~(6) "Official seal," a seal, stamp, or physical image affixed to or embossed on a tangible record or an electronic image attached to or logically associated with an electronic record;

(7) "Personal knowledge," a notarial officer has personal knowledge of the identity of an individual appearing before the officer if ~~either~~:

(a) The individual is personally known to the officer through dealings sufficient to provide reasonable certainty that the individual has the identity claimed. The notarial officer must have known and had regular interactions with the individual for an extended period of time. A mere acquaintance does not amount to personal knowledge for purposes of this definition; ~~or~~

(b) The notarial officer represents the individual as ~~their~~ the individual's attorney, real estate agent, auctioneer, or public accountant, or any combination thereof; or

(c) The notarial officer can reasonably identify the individual by two different methods of identity proofing.

~~(5)~~(8) "Remotely located person," a person who is not in the physical presence of the notary;

(9) "Tamper-evident," any change to an electronic record displays evidence of the change;

(10) "Verification on oath or affirmation," a declaration, made by a person on oath or affirmation before a notarial officer, that a statement in a document is true; and

~~(6)~~(11) "Video communication technology," an electronic device or process that allows a notarial officer physically located in this state and a remotely located person not in the physical presence of the notarial officer to communicate in real-time with each other simultaneously by sight and sound and that, as necessary, makes reasonable accommodation for individuals with vision, hearing, or speech impairments.

Section 3. That § 18-1-3.1 be AMENDED:

18-1-3.1. A notarial officer ~~shall~~ must have ~~a~~ an official seal ~~that shall~~ to be used for the purpose of acknowledging a document. The seal ~~shall~~ must be ~~of~~ a type approved by the secretary of state and ~~shall~~ must contain at least:

(1) The notarial officer's name;

(2) The words~~,~~ "South Dakota";

(3) The words~~,~~ "notary public"; and

(4) A ~~border~~ surrounding ~~the imprint~~ border.

~~A seal may be a rubber stamp or a physical device capable of affixing to or embossing on a tangible document. A rubber~~ Rubber stamp ~~seal shall~~ seals and electronic seals must contain the ~~word,~~ words and seal within the surrounding border.

A notarial officer ~~shall~~ must indicate the date on which the notarial officer's commission expires below the official seal under this section.

Section 4. That a NEW SECTION be added to chapter 18-1:

A notarial officer in this state, while located in this state, may perform a

notarial act executed on an electronic record by a person not in the physical presence of the notarial officer but observed by the notarial officer through means of video communication technology if the notarial officer:

(1) Has personal knowledge, by means of two different methods of identity proofing, that the person has the identity being claimed;

(2) Affixes the notarial officer's signature to the electronic record executed by the person;

(3) Indicates the remote location of the person executing the document in the notarial certificate pursuant to section 11 of this Act;

(4) Indicates in the notarial certificate pursuant to section 11 of this Act that the notarial act involved a statement made or a signature executed by a person not in the physical presence of the notarial officer, but appearing by means of video communication technology, and a tamper-evident electronic notarization system; and

(5) Creates an audio-visual copy of the performance of the notarial act.

Section 5. That a NEW SECTION be added to chapter 18-1:

A notarial officer must retain an electronic audio-visual copy of each notarial act involving the use of a tamper-evident notarization system for ten years from the date of the performance. Upon suspension or revocation of a notarial officer's commission, or upon death or incapacity, the notarial officer or the guardian, conservator, or personal representative of the incapacitated or deceased notarial officer must retain an electronic audio-visual copy of each notarial act for ten years. In lieu of retaining copies as required by this section, the copies may be held by a repository designated by or on behalf of the notarial officer.

Section 6. That a NEW SECTION be added to chapter 18-1:

A notarial officer, prior to performing notarial acts with respect to electronic records, must select at least one tamper-evident electronic notarization system with which to place the signature and official seal of the notarial officer on electronic records. A person may not require a notarial officer to perform a notarial act with respect to an electronic record with a system that the notarial officer has not selected. A notarial officer must notify the secretary of state, on forms prescribed by the secretary, of the names of each tamper-evident notarization system used by that notarial officer for the notarization of electronic records.

Section 7. That a NEW SECTION be added to chapter 18-1:

A register of deeds must accept for record a tangible copy of an electronic record containing a notarial certificate as satisfying any requirement that a signature on a record accepted for recording be an original, if the notarial officer executing the notarial certificate certifies the tangible copy is an accurate copy of the electronic record pursuant to section 8 of this Act.

Section 8. That a NEW SECTION be added to chapter 18-1:

The certificate authenticating a printed electronic record under section 7 of this Act must be substantially in the following form:

I, _____, a notary public, certify that the attached document is an accurate copy of the original electronic record upon which my electronic signature and official seal are inscribed, and that the electronic record was printed by me or under my supervision.

I hereunto set my hand and official seal.

_____

_____

Title of officer.

Section 9. That a NEW SECTION be added to chapter 18-1:

The secretary of state may promulgate rules pursuant to chapter 1-26 to:

(1) Create standards for online notarial acts in accordance with this Act, including standards for credential analysis, identity proofing, and communication technology used for online notarial acts; and

(2) Ensure the integrity, security, and authenticity of online notarial acts in accordance with this Act.

Section 10. That a NEW SECTION be added to chapter 18-1:

The failure of a notarial officer to perform a duty or meet a requirement specified by law does not invalidate a notarial act performed by the notarial officer. The validity of a notarial act does not prevent an aggrieved person from seeking to invalidate the record or transaction that is the subject of the notarial act or from seeking other remedies based on the law of this state or the law of the United States. Nothing in this section validates a purported notarial act performed by an individual who does not have the authority to perform notarial acts.

Section 11. That a NEW SECTION be added to chapter 18-4:

The notarial certificate of a document executed pursuant to section 4 of this Act must be substantially in the following form:

State of South Dakota

County of _____ ss

On this ____ day of _____, in the year ____, before me, _____ (notary's name), the undersigned office appeared _____ (signer's name) with a remote location of _____ (city/state), whom I have personal knowledge by identity proofing and whom I positively identified as the person whose name is subscribed to the within instrument, appeared before me not in my physical presence but by means of a tamper-evident electronic notarization system, and I observed his/her execution of the same for the purposes contained therein and confirm that I affix my official seal to the same instrument so executed.

Signed March 14, 2024

_____

EVIDENCE

Chapter 72

(Senate Bill 98)

An Act to establish the admissibility of evidence of similar crimes in child molestation cases.

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

Section 1. That chapter 19-19 be amended with a NEW SECTION:

(a) Permitted uses. In a criminal case in which a defendant is accused of child molestation, the court may admit evidence that the defendant committed any other child molestation. The evidence may be considered on any matter to which it is relevant.

(b) Disclosure to the defendant. If the prosecutor intends to offer this evidence, the prosecutor must disclose it to the defendant, including witnesses' statements or a summary of the expected testimony. The prosecutor must do so at least fifteen days before trial or at a later time that the court allows for good cause.

(c) Effect on other rules. This rule does not limit the admission or consideration of evidence under any other rule.

(d) Definition of child and child molestation. As used in this section:

(1) "Child" means a person below the age of eighteen; and

(2) "Child molestation" means a crime under federal law or state law involving:

(a) Any conduct prohibited by chapter 22-22 and committed with a child;

(b) Contact between any part of the defendant's body or an object and a child's genitals or anus;

(c) Contact between the defendant's genitals or anus and any part of a child's body;

(d) Deriving sexual pleasure or gratification from inflicting death, bodily injury, or physical pain on a child; or

(e) An attempt or conspiracy to engage in conduct described in subsections (a) through (d).

Signed March 6, 2024

PERSONAL RIGHTS AND OBLIGATIONS

Chapter 73
(House Bill 1076)

An Act to require the consideration of the definition of antisemitism when investigating unfair or discriminatory practices.

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

Section 1. That chapter 20-13 be amended with a NEW SECTION:

In reviewing, investigating, or deciding whether an alleged violation of this chapter is antisemitic, the Division of Human Rights must consider the definition of antisemitism. For the purposes of this chapter, the term "antisemitism" has the same meaning as the working definition of antisemitism adopted by the International Holocaust Remembrance Alliance on May 26, 2016, including the contemporary examples of antisemitism identified therein.

Nothing in this section may be construed to diminish or infringe upon any protected right under U.S. Const., amend. I or S.D. Const., Art. VI, § 5, or to conflict with any federal, state, or local discrimination law.

Signed March 6, 2024

JUDICIAL REMEDIES

Chapter 74
(Senate Bill 84)

An Act to update the edition of the guidebook used for measuring damages to trees or plants.

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

Section 1. That § 21-3-10 be AMENDED:

21-3-10. The Guide for Plant Appraisal, ~~Ninth Edition~~ Tenth Edition Revised, as published by the International Society of Arboriculture ~~as of January 1, 2007~~, shall be used as a guide to measure the actual damages for the wrongful injury to trees or plants.

Signed March 4, 2024

Chapter 75

(Senate Bill 90)

An Act to revise and repeal provisions related to forcible entry and detainer.

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

Section 1. That § 21-16-2 be REPEALED:

~~In all cases arising under subdivisions 21-16-1(4), (5), and (6), three days' written notice to quit must be given to the lessee, subtenant, or party in possession, before proceedings can be instituted, and may be served and returned in like manner as a summons is served and returned. On the second service attempt, at least six hours after the previous service attempt, the notice to quit may be posted in a conspicuous place on the property, and also delivered to a person there residing, if such person can be found; and also sent by first class mail addressed to the tenant at the place where the property is situated.~~

Section 2. That § 21-16-7 be AMENDED:

21-16-7. The time for appearance and pleading shall be ~~four~~ five days from the time of service on the defendant or thirty days after the publication of service under § 21-16-6.1, whichever occurs sooner. No adjournment or continuance shall be made for more than fourteen days, unless the defendant applying therefor shall give an undertaking to the plaintiff with good and sufficient surety to be approved by the court, conditioned for the payment of the rent that may accrue, together with costs if judgment be rendered against the defendant.

Signed March 14, 2024

Chapter 76

(House Bill 1084)

An Act to repeal a provision related to habeas corpus proceedings.

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

Section 1. That § 21-27-6 be REPEALED:

~~Any judge empowered by this chapter to issue writs of habeas corpus, who shall corruptly refuse to issue such writ, when legally applied to, in a case where such writ may lawfully issue, or who shall, for the purpose of oppression, unreasonably delay the issuing of such writ, shall, for every such offense, forfeit to the prisoner or person aggrieved a sum not exceeding five hundred dollars. Recovery of the penalty provided herein shall be no bar to a civil suit for damages.~~

Signed March 4, 2024

Chapter 77

(House Bill 1185)

An Act to amend provisions regarding entry on private property for examination and survey of a project requiring a siting permit.

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

Section 1. That § 21-35-31 be AMENDED:

21-35-31. The provisions of this section only apply to a project ~~which~~ that requires a siting permit pursuant to chapter 49-41B. Each person vested with authority to take private property for public use may cause an examination and survey to be made as necessary for its proposed facilities. The person or the person's agents and officers may enter the private property for the purpose of the examination and survey. Any person seeking to cause an examination or survey, where permission for examination or survey has been denied, ~~shall~~ must:

(1) Have ~~filed~~ a pending or approved siting permit application with the Public Utilities Commission pursuant to § 49-41B-11;

(2) ~~Give thirty days written notice, including the filing and expected dates of entry,~~ Provide to the owner ~~and any tenant in possession~~ of the private property, thirty days' written notice served in accordance with § 15-6-4 or sent by certified mail with return receipt requested that contains:

(a) A description of the specific portions of property to be examined and surveyed;

(b) The anticipated date and time of entry;

(c) The anticipated duration of presence on the property;

(d) A description of the types of surveys and examinations that may be conducted; and

(e) The name and contact information of the person, or the person's manager or officer, who will enter the property for the purpose of causing the examination and survey; and

(3) Make a payment to the owner, or provide sufficient security for the payment, for any actual damage done to the property by the entry. If the project is for construction of a common carrier, as described in § 49-7-11, in addition to the foregoing, the person must make a one-time payment to the owner, prior to entry, in the amount of five hundred dollars as compensation for entering the owner's property.

A landowner may challenge the right to survey or examine by commencing an action in circuit court in the county where the survey or examination is proposed within thirty days of service of the written notice in circuit court. Upon the written request of the owner, the results of a survey or examination of the owner's private property conducted pursuant to this section must be provided to the owner. This section does not apply to the state or its political subdivisions. This section is in addition to and not in derogation of other existing law.

For the purpose of this section, the term "examination" means an inspection of a property to obtain general information which is not a matter of public record. For the purpose of this section, the term "survey" means a more detailed, comprehensive, or invasive investigation of a property.

Signed March 7, 2024

Chapter 78
(Senate Bill 85)

An Act to revise a provision related to an action to quiet title to real property.

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

Section 1. That § 21-41-3 be AMENDED:

21-41-3. ~~If a party, twenty days or more before bringing suit to quiet a title to real estate shall request of the person holding an apparent adverse interest or right therein the execution of a quitclaim deed or other instrument necessary to divest said person of such apparent adverse interest therein, and shall also tender to him one dollar and twenty-five cents to cover the expense of the execution and delivery of the deed or such other instrument, and if he shall refuse or neglect to comply therewith, the filing of a disclaimer of interest or right shall not avoid the costs in an action afterwards brought, and the court may in its discretion, if the plaintiff succeeds, tax in addition to the ordinary costs of court, an attorney fee for plaintiff's attorney not exceeding forty dollars.~~ A person or entity is liable for costs, disbursements, and reasonable attorney's fees if the party seeking to quiet title is successful, and at least twenty days before bringing suit, the party seeking to quiet title:

(1) Delivers to the person or entity, and requests the person or entity to execute and return, a quitclaim deed or other instrument necessary to divest the person or entity of an apparent adverse interest or right;

(2) Tenders to the person or entity one hundred dollars for costs associated with the handling and notarization of the instrument; and

(3) The person or entity refuses or neglects to comply with the request.

Signed March 4, 2024

CRIMES

Chapter 79
(House Bill 1104)

An Act to enhance the penalty for accessory to first- or second-degree murder.

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

Section 1. That § 22-3-5 be AMENDED:

22-3-5. A person is an accessory to a crime, if, with intent to hinder, delay, or prevent the discovery, detection, apprehension, prosecution, conviction, or punishment of another for the commission of a felony, that person renders assistance to the other person. There are no accessories to misdemeanors.

The term, render assistance, means to:

(1) Harbor or conceal the other person;

(2) Warn the other person of impending discovery or apprehension, other than a warning given in an effort to bring the other person into compliance with the law;

(3) Provide the other person with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery or apprehension;

(4) Obstruct anyone by force, intimidation, or deception in the performance of any act which might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person; or

(5) Conceal, destroy, or alter any physical evidence that might aid in the discovery, detection, apprehension, prosecution, conviction, or punishment of the other person.

A violation of this section is a Class 5 felony. A violation of this section is a Class 4 felony if the person is an accessory to the crime of murder in the first degree pursuant to § 22-16-4 or murder in the second degree pursuant to § 22-16-7.

Signed February 27, 2024

Chapter 80
(House Bill 1038)

An Act to exclude certain habitual DUI offenders from eligibility for presumptive probation.

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

Section 1. That § 22-6-11 be AMENDED:

22-6-11. The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-23-4.6, 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation.

If the offender is under the supervision of the Department of Corrections, the court shall order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended state incarceration sentence if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

Signed March 5, 2024

Chapter 81

(House Bill 1089)

An Act to exclude certain crimes from presumptive probation.

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

Section 1. That § 22-6-11 be AMENDED:

22-6-11. The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, 22-24A-3, 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-17 if the property stolen is a firearm, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation.

If the offender is under the supervision of the Department of Corrections, the court shall order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended state incarceration sentence if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge shall state on the record at the time of sentencing the aggravating circumstances and the same shall be stated in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

Signed March 5, 2024

Chapter 82
(Senate Bill 146)

An Act to revise and repeal provisions related to threatening persons holding statewide office, judicial officers, and elected officers and to provide a penalty therefor.

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

Section 1. That a NEW SECTION be added to chapter 22-11:

It is a Class 5 felony for a person to knowingly and intentionally communicate any written or electronic threat to take the life of or to inflict serious bodily harm upon:

(1) Any current or former judicial officer as defined in § 22-11-14;

(2) Any current or former person holding statewide office as defined in § 12-27-1; or

(3) The immediate family of any current or former judicial officer or person holding statewide office.

If a threat constitutes a violation of § 22-18-1.1 the provisions of this section are superseded and the penalties provided in § 22-18-1.1 apply.

Section 2. That a NEW SECTION be added to chapter 22-11:

It is a Class 1 misdemeanor for a person to knowingly and intentionally communicate any written or electronic threat to take the life of or to inflict serious bodily harm upon an elected officer, or the immediate family of an elected officer. The threat must relate to the elected officer's official capacity.

For the purposes of this section, the term "elected officer" means:

(1) Any current or former member of the Legislature;

(2) Any current or former person in local government elective office;

(3) Any current or former school board member; and

(4) Any person who has been elected or appointed to the elective office who has not yet assumed office.

If a threat constitutes a violation of § 22-18-1.1 the provisions of this section are superseded and the penalties provided in § 22-18-1.1 apply.

Section 3. That § 22-11-15.2 be REPEALED.

~~Any person who, knowingly and intentionally, deposits for conveyance in the mail or for a delivery from any post office or by any messenger any letter, paper, writing, print, or document containing any threat to take the life of or to inflict bodily harm upon a constitutional officer or former constitutional officer of the state, or a member of the constitutional officer's immediate family, or who, knowingly and intentionally, otherwise makes any threat to take the life of or to inflict bodily harm upon a constitutional officer or former constitutional officer or a member of the constitutional officer's immediate family is guilty of a Class 5 felony.~~

Signed March 18, 2024

Chapter 83

(House Bill 1046)

An Act to prohibit the intentional disarming of a law enforcement officer and to provide a penalty therefor.

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

Section 1. That a NEW SECTION be added to chapter 22-11:

Any person who, through use of force or threat of force, intentionally disarms or attempts to disarm a law enforcement officer, while the officer is engaged in the performance of the officer's duties, without the officer's consent, is guilty of a Class 4 felony.

For the purposes of this section, the term "weapon" means any firearm, stun gun, self-defense electronic control device, chemical irritant spray, or baton. The term "disarm" means to take or remove a weapon from the person of the officer or the officer's immediate presence through the physical act of grabbing, holding, seizing, pushing, lifting, picking up, or other similar action.

Signed February 12, 2024

Chapter 84

(House Bill 1086)

An Act to establish an enhanced penalty for probationers intentionally causing contact with bodily fluids or human waste with a Unified Judicial System employee.

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

Section 1. That chapter 22-18 be amended with a NEW SECTION:

Any person under probationary supervision of the Unified Judicial System who intentionally throws, smears, spits, or otherwise causes blood, vomit, saliva, mucus, semen, excrement, urine, or human waste to come in contact with a Unified Judicial System employee during the performance of the employee's duties is guilty of a Class 6 felony.

Signed March 4, 2024

Chapter 85

(House Bill 1096)

An Act to provide that a temporary restraining order may extend beyond thirty days in certain circumstances involving stalking.

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

Section 1. That a NEW SECTION be added to chapter 22-19A:

If an ex parte temporary protection order is in effect and a judge issues a protection order pursuant to § 22-19A-8, the ex parte temporary protection order remains effective until the order issued pursuant to § 22-19A-8 is served on the respondent.

Section 2. That § 22-19A-12 be AMENDED:

22-19A-12. If an affidavit filed with an application under § 22-19A-8 alleges that immediate and irreparable injury, loss, or damage is likely to result before an adverse party or the party's attorney can be heard in opposition, the court may grant an ex parte temporary protection order pending a full hearing and granting relief as the court deems proper, including an order restraining any person from committing acts of stalking or physical injury as a result of an assault or a crime of violence as defined in subdivision 22-1-2(9). An ex parte temporary protection order is effective for a period of thirty days, except as provided in section 1 of this Act, unless for good cause the court grants a continuance. No continuance may exceed thirty days unless the court finds good cause for the additional continuance and:

(1) The parties stipulate to an additional continuance; or

(2) The court finds that law enforcement is unable to locate the respondent for purposes of service of the ex parte protection order.

If a continuance is granted, the court by order shall extend the ex parte temporary protection order until the rescheduled hearing date. The respondent shall be personally served without delay with a copy of the ex parte order along with a copy of the petition, affidavit, and notice of the date set for the hearing.

Signed March 5, 2024

Chapter 86
(House Bill 1197)

An Act to require the publication of measures taken to restrict the access of obscene materials by minors.

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

Section 1. That § 22-24-55 be AMENDED:

22-24-55. ~~Any~~Each public school ~~that provides a public access computer~~ in the state shall ~~do one or both of the following~~:

(1) Equip ~~the~~ each public access computer with software that will limit minors' ability to gain access to obscene matter or materials, as defined by § 22-24-27, or purchase internet connectivity from an internet service provider that provides filter services to limit access to obscene materials; ~~or~~ and

(2) Develop and implement, by January 1, ~~2001~~ 2025, a local policy that establishes measures to restrict minors from ~~computer access to~~ accessing obscene matter or materials. The school board shall:

(a) Publish the policy on the school district's website; or

(b) Publish the policy annually in the legal newspaper designated by the school board pursuant to § 13-8-10.

Section 2. That § 22-24-56 be AMENDED:

22-24-56. ~~Any~~Each public library ~~that provides a public access computer~~ in the state shall ~~develop~~:

(1) Equip each public access computer with software that will limit minors' ability to gain access to obscene matter or material, as defined by § 22-24-27, or purchase internet connectivity from an internet service provider that provides filter services to limit access to obscene material; and

(2) Develop and implement, by January 1, ~~2001~~ 2025, a local policy that establishes measures to restrict minors from ~~computer access to~~ accessing obscene matter or materials. The public library shall:

(a) Publish the policy on the official website of the political subdivision that maintains the library; or

(b) Publish the policy annually in a legal newspaper designated by the governing body of the political subdivision that maintains the library pursuant to § 7-18-3 or 9-12-6.

Signed March 5, 2024

Chapter 87

(Senate Bill 79)

An Act to revise provisions related to the possession, distribution, and manufacture of child pornography.

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

Section 1. That § 22-24A-2 be AMENDED:

22-24A-2. Terms used in §§ 22-19A-1, 22-24A-1 to 22-24A-20, inclusive, 22-24B-1, 23A-27-14.1, and 43-43B-1 to 43-43B-3, inclusive, mean:

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

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

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

(3A) "Child-like sex doll," any obscene anatomical doll, obscene anatomical mannequin, or obscene anatomical robot that is intentionally designed to resemble a prepubescent child and either to entice sexual excitement or to engage in prohibited sexual acts;

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

(5) ~~Deleted by SL 2005, ch 120, § 408~~"Computer-generated child pornography," any visual depiction of:

(a) An actual minor that has been created, adapted, or modified to depict that minor engaged in a prohibited sexual act;

(b) An actual adult that has been created, adapted, or modified to depict that adult as a minor engaged in a prohibited sexual act; or

(c) An individual indistinguishable from an actual minor created by the use of artificial intelligence or other computer technology capable of processing and interpreting specific data inputs to create a visual depiction;

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

(7) "Harmful to minors," any reproduction, imitation, characterization, description, visual depiction, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement if it:

(a) Predominantly appeals to the prurient, shameful, or morbid interest of minors;

(b) Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(c) Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

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

(8) "Indistinguishable," when used with respect to a visual depiction, means virtually indistinguishable, in that the visual depiction is such that an ordinary person viewing the visual depiction would conclude that the visual depiction is of an actual minor engaged in a prohibited sexual act;

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

~~(9)~~(10) "Nudity," the showing or the simulated showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state for the purpose of creating sexual excitement. This term does not include a mother's breast-feeding of her baby irrespective of whether or not the nipple is covered during or incidental to feeding;

~~(10)~~(11) "Obscene," the status of material which:

(a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;

(b) Depicts or describes, in a patently offensive way, prohibited sexual acts; and

(c) Taken as a whole, lacks serious literary, artistic, political, or scientific value.

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

~~(11)~~(12) "Person," includes individuals, children, firms, associations, joint ventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations;

~~(12)~~(13) "Sadism," sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture, or death;

~~(13)~~(14) "Sadomasochistic abuse," flagellation or torture by or upon a minor, or the condition of being fettered, bound, or otherwise physically restrained, for the purpose of deriving sexual satisfaction, or satisfaction brought about as a result of sadistic violence, from inflicting harm on another or receiving such harm oneself;

~~(14)~~(15) "Sexual battery," oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object. This term does not include an act done for a bona fide medical purpose;

~~(15)~~(16) "Sexual bestiality," any sexual act, actual or simulated, between a person and an animal involving the sex organ of the one and the mouth, anus, or vagina of the other;

~~(16)~~(17) "Prohibited sexual act," actual or simulated sexual intercourse, sadism, masochism, sexual bestiality, incest, masturbation, or sadomasochistic abuse; actual or simulated exhibition of the genitals, the pubic or rectal area, or the bare feminine breasts, in a lewd or lascivious manner; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person is a female, breast with the intent to arouse or gratify the sexual desire of either party; defecation or urination for the purpose of creating sexual excitement in the viewer; or any act or conduct which constitutes sexual battery or simulates that sexual battery is being or will be committed. The term includes encouraging, aiding, abetting or enticing any person to commit any such acts as provided in this subdivision. The term does not include a mother's breast-feeding of her baby;

~~(17)~~(18) "Sexual excitement," the condition of the human male or female genitals if in a state of sexual stimulation or arousal;

~~(18)~~(19) "Sexually oriented material," any book, article, magazine, publication, visual depiction or written matter of any kind or any drawing, etching, painting, photograph, motion picture film, or sound recording that depicts sexual activity, actual or simulated, involving human beings or human beings and animals, that exhibits uncovered human genitals or the pubic region in a lewd or lascivious manner, or that exhibits human male genitals in a discernibly turgid state, even if completely and opaquely covered;

~~(19)~~(20) "Simulated," the explicit depiction of conduct described in subdivision (16) of this section that creates the appearance of such conduct and that exhibits any uncovered portion of the breasts, genitals, or anus;

~~(20)~~(21) "Visual depiction," any developed and undeveloped film, photograph, slide and videotape, and any photocopy, drawing, printed or written material, and any data stored on computer disk, digital media, or by electronic means that are capable of conversion into a visual image.

Section 2. That a NEW SECTION be added to chapter 22-24A:

A person is guilty of possessing child pornography if the person knowingly possesses:

(1) Any visual depiction of a minor engaging in a prohibited sexual act, or in a simulation of a prohibited sexual act; or

(2) Any computer-generated child pornography.

A violation of this section is a Class 4 felony. A conviction under this section for a first offense must be punished by a mandatory sentence in a state correctional facility of at least one year. A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least five years.

Section 3. That a NEW SECTION be added to chapter 22-24A:

A person is guilty of distributing child pornography if the person knowingly sells or distributes:

(1) Any visual depiction of a minor engaging in a prohibited sexual act, or in a simulation of a prohibited sexual act; or

(2) Any computer-generated child pornography.

A violation of this section is a Class 3 felony. A conviction under this section for a first offense must be punished by a mandatory sentence in a state correctional facility of at least five years. A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least ten years.

A person convicted of a violation of this section may not be convicted of possessing child pornography pursuant to section 2 of this Act for the same visual depiction.

Section 4. That a NEW SECTION be added to chapter 22-24A:

A person is guilty of manufacturing child pornography if the person creates, causes the creation of, or knowingly permits the creation of:

(1) Any visual depiction of a minor engaged in a prohibited sexual act, or in a simulation of a prohibited sexual act; or

(2) Any computer-generated child pornography.

A violation of this section is a Class 2 felony. A conviction under this section for a first offense must be punished by a mandatory sentence in a state correctional facility of at least ten years. A conviction under this section for a second or subsequent offense must be punished by a mandatory sentence in a state correctional facility of at least twenty years.

A person convicted of a violation of this section may not be convicted of possessing child pornography pursuant to section 2 of this Act for the same visual depiction.

Section 5. That a NEW SECTION be added to chapter 22-24A:

Any conviction for, or plea of guilty to, an offense in another state that, if committed in this state, would be a violation of sections 2 to 4, inclusive, of this Act, must be used to determine if the violation being charged is a second or subsequent offense.

Section 6. That a NEW SECTION be added to chapter 22-24A:

The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating sections 2 to 4, inclusive, of this Act.

Section 7. That a NEW SECTION be added to chapter 22-24A:

Consent to performing the proscribed acts by a minor or a minor's parent, guardian, or custodian, or mistake as to the minor's age is not a defense to a charge of violating sections 2 to 4, inclusive, of this Act.

Section 8. That a NEW SECTION be added to chapter 22-24A:

It is an affirmative defense to a violation of sections 2 to 4, inclusive, of this Act that the visual depiction is of the person charged and no other person appears in the visual depiction.

Section 9. That a NEW SECTION be added to chapter 22-24A:

The sentencing court may impose a sentence other than that required by sections 2 to 4, inclusive, of this Act if the court finds that mitigating circumstances exist that require a departure from the mandatory sentence imposed by sections 2 to 4, inclusive, of this Act. The court shall file, in writing, its finding of mitigating circumstances and the factual basis relied upon by the court.

Section 10. That § 22-6-11 be AMENDED:

22-6-11. The sentencing court shall sentence an offender convicted of a Class 5 or Class 6 felony, except those convicted under §§ 22-11A-2.1, 22-14-15, 22-18-1, 22-18-1.05, 22-18-26, 22-18-29, 22-19A-1, 22-19A-2, 22-19A-3, 22-19A-7, 22-19A-16, 22-22A-2, 22-22A-4, ~~22-24A-3,~~ 22-22-24.3, subdivision 22-23-2(2), 22-24-1.2, 22-24B-2, 22-24B-12, 22-24B-12.1, 22-24B-23, 22-30A-46, 22-42-7, subdivision 24-2-14(1), 32-34-5, and any person ineligible for probation under § 23A-27-12, to a term of probation. If the offender is under the supervision of the Department of Corrections, the court ~~shall~~ must order a fully suspended state incarceration sentence pursuant to § 23A-27-18.4. The sentencing court may impose a sentence other than probation or a fully suspended state incarceration sentence if the court finds aggravating circumstances exist that pose a significant risk to the public and require a departure from presumptive probation under this section. If a departure is made, the judge ~~shall~~ must state ~~on the record at the time of sentencing~~ the aggravating circumstances ~~and the same shall be stated~~ on the record at the time of sentencing and in the dispositional order. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest.

Section 11. That § 22-24-1.2 be AMENDED:

22-24-1.2. A person commits the crime of indecent exposure if, with the intent to arouse or gratify the sexual desire of any person, the person exposes his or her genitals in a public place, or in the view of a public place, under circumstances in which that person knows that person's conduct is likely to annoy, offend, or alarm another person. A violation of this section is a Class 1 misdemeanor. However, if ~~such~~ the person has been previously convicted of a felony violation of § 22-22-1, 22-22-7, or ~~22-24A-3~~ sections 2 to 4, inclusive, of this Act, that person is guilty of a Class 6 felony. Any person convicted of a third or subsequent violation of this section is guilty of a Class 6 felony.

Section 12. That § 22-24A-20 be AMENDED:

22-24A-20. The provisions of §§ 22-22-24.3, 22-24A-1, 22-24A-1.1, ~~22-24A-3,~~ 22-24A-3.1, ~~and~~ 22-24A-5, and sections 2 to 4, inclusive, of this Act do not apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing, or making of films, photographs, or other materials involving only nudity, if the materials are made for and have a serious literary, artistic, educational, or scientific value.

Section 13. That § 22-24B-1 be AMENDED:

22-24B-1. 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, or manufacturing child pornography as set forth in ~~§ 22-24A-3~~ sections 2 to 4, inclusive, of this Act;

(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;

(11) Felony indecent exposure as previously set forth in former § 22-24-1 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 crime under federal law;

(18) Any crime committed in another state if that state also requires anyone convicted of that crime register as a sex offender in that state;

(19) If the victim is a minor:

(a) Any sexual acts between a jail employee and a detainee as set forth in § 22-22-7.6;

(b) Any sexual contact by a psychotherapist as set forth in § 22-22-28; or

(c) Any sexual penetration by a psychotherapist as set forth in § 22-22-29;

(20) Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31;

(21) First degree human trafficking as set forth in § 22-49-2 if the victim is a minor;

(22) Second degree human trafficking as set forth in § 22-49-3 involving the prostitution of a minor;

(23) Felony use or dissemination of visual recording or photographic device without consent and with intent to self-gratify, harass, or embarrass as set forth in § 22-21-4;

(24) Manufacturing or distributing a child-like sex doll as set forth in § 22-24A-1.1; or

(25) Felony conviction of purchasing or possessing a child-like sex doll as set forth in § 22-24A-3.1.

Section 14. That § 26-10-33 be AMENDED:

26-10-33. No minor, as defined in subdivision 26-7A-1(21), may intentionally create, produce, distribute, present, transmit, post, exchange, disseminate, or possess, through any computer or digital media, any photograph or digitized image or any visual depiction of a minor in any condition of nudity, as defined in ~~subdivision 22-24A-2(9)~~ subdivision 22-24A-2(10), or involved in any prohibited sexual act, as defined in ~~subdivision 22-24A-2(16)~~ subdivision 22-24A-2(17). Any violation of this section constitutes the offense of juvenile sexting, which is a Class 1 misdemeanor.

Section 15. That § 22-24A-3 be REPEALED:

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

~~(1) Creates any visual depiction of a minor engaging in a prohibited sexual act, or in the simulation of such an act;~~

~~(2) Causes or knowingly permits the creation of any visual depiction of a minor engaged in a prohibited sexual act, or in the simulation of such an act; or~~

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

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

~~A violation of this section is a Class 4 felony. If a person is convicted of a second or subsequent violation of this section within fifteen years of the prior conviction, the violation is a Class 3 felony.~~

~~The court shall order an assessment pursuant to § 22-22-1.3 of any person convicted of violating this section.~~

Signed February 12, 2024

Chapter 88

(Senate Bill 27)

An Act to modify the criteria for removal from the sex offender registry.

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

Section 1. That § 22-24B-19 be AMENDED:

22-24B-19. To be eligible for removal from the registry as a Tier I offender, the petitioner ~~shall~~ must show, by clear and convincing evidence, that all of the following criteria have been met:

(1) At least five years have elapsed since the date the petitioner first registered pursuant to this chapter;

(2) The crime requiring registration was for:

(a) Statutory rape under subdivision 22-22-1(5), or an attempt to commit statutory rape under subdivision 22-22-1(5), but only if the petitioner was twenty-one years of age or younger at the time the offense was committed or attempted;

(b) A juvenile adjudication for a sex crime as defined in subdivision 22-24B-1(1);

(c) Sexual contact under § 22-22-7 if the victim was between the ages of thirteen and sixteen and the petitioner was at least three years older than the victim, but only if the petitioner was twenty-one years of age or younger at the time the offense was committed;

(d) Felony use or dissemination of ~~visual recording or photographic device~~ any image or recording without consent under § 22-21-4; or

(e) An out-of-state, federal or court martial offense that is comparable to the elements of the crimes listed in ~~(a), (b), or (c)~~ subsections (2)(a), (2)(b), (2)(c), or (2)(d);

(3) The circumstances surrounding the crime requiring registration did not involve a child under the age of thirteen;

(4) The petitioner is not a recidivist sex offender;

(5) The petitioner has substantially complied in good faith with the registration and re-registration requirements imposed under chapter 22-24B; and

(6) Petitioner demonstrates to the satisfaction of the court that ~~he or she~~ petitioner does not pose a risk or danger to the community.

For purposes of this section, any period of time during which the petitioner was incarcerated or during which the petitioner was confined in a mental health facility does not count toward the five-year calculation, regardless of whether ~~such~~ the incarceration or confinement was for the sex offense requiring registration or for some other offense.

Section 2. That § 22-24B-2.1 be AMENDED:

22-24B-2.1. The sex offender registry ~~shall consist~~ consists of three tiers as provided for in §§ 22-24B-19 to 22-24B-19.2, inclusive. Placement in Tier III

requires registrants to register throughout their lifetime. Placement in Tier II requires registrants to register for a minimum of twenty-five years. Placement in Tier I requires registrants to register for a minimum of ~~ten~~ five years.

Signed February 12, 2024

Chapter 89

(Senate Bill 175)

An Act to add a domestic abuse shelter to the definition of a community safety zone.

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

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

22-24B-22. Terms used in §§ 22-24B-22 to 22-24B-28, inclusive, mean:

(1) "Community safety zone," the measurement of a straight line that creates an area that lies within five hundred feet from the facilities and grounds of any school, public park, public playground, domestic abuse shelter, sexual assault shelter, or public pool, including the facilities and grounds itself;

(2) "Loiter," to remain for a period of time and under circumstances that a reasonable person would determine is for the primary purpose of observing or contacting minors;

(3) "School," any public, private, denominational, or parochial school offering preschool, kindergarten, or any grade from one through twelve accredited through the Department of Education. This term does not apply to any facility where the education of students might occur incidentally to the primary purpose of the facility;

(4) "Residence," the address a person lists for purposes of the sex offender registry under ~~§ 22-24B-12 and subdivision 22-24B-8(3)~~ subdivision 22-24B-8(3) and § 22-24B-12.

Section 2. That § 22-24B-23 be AMENDED:

22-24B-23. No person who is required to register as a sex offender pursuant to this chapter may establish a residence or reside within a community safety zone unless:

(1) The person is incarcerated in a jail or prison or other correctional placement which is located within a community safety zone;

(2) The person is on parole or probation and has been assigned to a halfway house or supervised living center within a community safety zone;

(3) The person is homeless and has been admitted to a community homeless shelter within a community safety zone by an appropriate community official;

(4) The person is placed in a health care facility licensed pursuant to chapter 34-12, or certified under Title XVIII or XIX of the Social Security Act as amended to December 31, 2001, or receiving services from a community

service provider accredited or certified by the Department of Human Services or the Department of Social Services, which is located within a community safety zone;

(5) The person was under age eighteen at the time of the offense and the offender was not tried and convicted of the offense as an adult;

(6) The person established and inhabited the residence as of July 1, ~~2006~~ 2024;

(7) The school, public park, public pool, domestic abuse shelter, sexual assault shelter, or public playground was built or established subsequent to the person's establishing residence at the location; or

(8) The circuit court has entered an order pursuant to § 22-24B-28 exempting the offender from the provisions of §§ 22-24B-22 to 22-24B-28, inclusive.

A violation of this section is a Class 6 felony. Any subsequent violation is a Class 5 felony.

Signed March 6, 2024

Chapter 90

(Senate Bill 6)

An Act to revise provisions related to death by distribution of a Schedule I or II substance.

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

Section 1. That § 22-42-2 be AMENDED:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, a violation of this section is a Class 3 felony if ~~the person is in possession of~~ three or more of the following aggravating circumstances apply:

(1) ~~Three~~ The person is in possession of three hundred dollars or more in cash;

(2) ~~A~~ The person is in possession of a firearm or other weapon pursuant to §§ 22-14-6, 22-14-15, 22-14-15.1, 22-14-15.3, and subdivision 22-1-2(8);

(3) ~~Bulk~~ The person is in possession of bulk materials used for the packaging of controlled substances;

(4) ~~Materials~~ The person is in possession of materials used to manufacture a controlled substance including recipes, precursor chemicals, laboratory equipment, lighting, ventilating or power generating equipment; or

(5) ~~Drug~~ The person is in possession of drug transaction records or customer lists.

The distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. A first conviction under this section shall be punished by a

mandatory sentence in a state correctional facility of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under this section shall be punished by a mandatory sentence in a state correctional facility of at least ten years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least five years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction for distribution to a minor under this section shall be punished by a mandatory sentence in a state correctional facility of at least fifteen years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence, may not form the basis for reducing the mandatory time of incarceration required by this section.

Any conviction for, or plea of guilty to, an offense in another state which, if committed in this state, would be a violation of this section, and occurring within fifteen years prior to the date of the violation being charged, must be used to determine if the violation being charged is a second or subsequent offense.

Any person who, for consideration, intentionally distributes any controlled substance or counterfeit substance in violation of this section and another person dies as a direct result of using that substance~~, the sentence for the principal felony shall be enhanced by increasing the class of the principal felony two levels. The enhancement may not exceed the sentence for~~ is guilty of a Class 2 felony. If three or more of the above aggravating circumstances apply, the person is guilty of a Class 1 felony. If the substance is fentanyl and the person knew the substance was fentanyl, the person is guilty of a Class 1 felony. If the decedent is a minor, the person is guilty of a Class C felony.

A civil penalty may be imposed, in addition to any criminal penalty, upon a conviction of a violation of this section not to exceed ten thousand dollars. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

Signed March 18, 2024

LAW ENFORCEMENT

Chapter 91

(House Bill 1035)

An Act to extend the period of renewal for an enhanced permit to carry a concealed pistol.

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

Section 1. That § 23-7-56 be AMENDED:

23-7-56. A person who holds an enhanced permit to carry a concealed pistol may renew the permit through the sheriff of the county in which the person resides. The period for renewal begins ~~one hundred eighty days~~ twelve months before the permit expires and ends thirty days after the permit expires.

In order to renew an enhanced permit, a person shall:

(1) Pass a criminal background check consisting of a computer check of available online records and a check utilizing the National Instant Criminal Background Check System; and

(2) Present proof that:

(a) During the period for renewal, as set forth in this section, the person:

(i) Successfully completed the live fire component of a qualifying handgun course defined in § 23-7-58;

(ii) Received instruction regarding the use of force standards; and

(iii) Received instruction regarding relevant criminal statutory changes; or

(b) The person is a current or former law enforcement officer who, within the twelve-month period preceding the date of the expiration, qualified or requalified on a certified shooting course administered by a firearms instructor approved by the Law Enforcement Officers Standards Commission.

If a person fails to renew an enhanced permit to carry a concealed pistol during the period set forth in this section, the permit is deemed to be invalid. In order to obtain an enhanced permit thereafter, the person shall submit an application and meet all requirements set forth in § 23-7-53.

Signed February 5, 2024

CRIMINAL PROCEDURE

Chapter 92

(Senate Bill 15)

An Act to require a convicted defendant to reimburse the cost of digital forensic examination fees.

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

Section 1. That chapter 23A-27 be amended with a NEW SECTION:

A person convicted of a felony or misdemeanor shall, as part of the sentence imposed by the court, pay for the reimbursement of the cost of any digital forensic examination performed on any personal electronic device in the

investigation and prosecution of the crime for which the defendant is convicted. The fee assessed may not exceed ninety-five dollars for each device. Fees collected pursuant to this section by the Unified Judicial System must be deposited in the internet crimes investigation fund, created in section 3 of this Act.

For the purposes of this section, the term "personal electronic device" means any portable electronic device that is designed for and capable of wireless communication or electronic data retrieval, including a cellular telephone, tablet, laptop, computer, or two-way messaging device.

Section 2. That § 23A-27-25 be AMENDED:

23A-27-25. ~~All~~Except as provided below, all fines and pecuniary penalties~~, other than forfeitures provided for in § 23A-43-23, costs as provided in §§ 23-3-52, 23A-27-26, and 23A-27-27, restitution and civil penalties assessed under the state's environmental laws,~~ collected for the violation of any state law~~, when collected, shall~~ must be paid into the treasury of the proper county, the net proceeds of which ~~shall~~ must be applied and used each year for the benefit of the public schools of this state. This section does not apply to forfeitures provided for in § 23A-43-23, costs as provided in §§ 23-3-52, section 1 of this Act, 23A-27-26, and 23A-27-27, and restitution and civil penalties assessed under the state's environmental laws.

Section 3. That a NEW SECTION be added to chapter 1-11:

There is hereby established in the state treasury the internet crimes investigation fund. The fund consists of all fees imposed pursuant to section 1 of this Act. The attorney general shall maintain and administer the fund. Interest on moneys credited to the fund must be deposited in the fund. Expenditures out of the fund must be appropriated through the General Appropriations Act. Expenditures from the fund must be used for operational expenses including computer hardware, software licensing, and training for the office of internet crimes investigation, established in § 1-11-16, and the internet crimes against children unit.

Signed March 4, 2024

Chapter 93

(House Bill 1195)

An Act to provide authority for a court to order offenders convicted of vehicular homicide to pay restitution to a victim's children until age eighteen.

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

Section 1. That chapter 23A-28 be amended with a NEW SECTION:

If a defendant is convicted of vehicular homicide pursuant to § 22-16-41 and the deceased victim of the offense was a parent of a minor child, the sentencing court may order the defendant to pay restitution to each of the victim's children until each child reaches age eighteen, or age nineteen if the child is a full-time student in a secondary school.

The court shall consider all relevant factors in determining a support amount that is reasonable and necessary for the maintenance of each child, including:

(1) The financial needs and resources of the child;

(2) The financial needs and resources of the surviving parent, or if no other parent is alive or capable of caring for the child, the guardian of the child, including the state if the state is the guardian;

(3) The standard of living to which the child is accustomed;

(4) The physical and emotional condition of the child;

(5) The child's educational needs;

(6) The child's physical and legal custody arrangements; and

(7) The reasonable work-related childcare expenses of the surviving parent or guardian.

Pursuant to § 23A-28-7, a defendant ordered to pay support under this section shall make payments to the clerk of courts as trustee for remittance to the child's surviving parent or guardian. The child's surviving parent or guardian must expend the moneys for the benefit of the child. The clerk shall remit payment to the surviving parent or guardian within thirty business days of receipt by the clerk. The clerk shall deposit all payments no later than the next business day after receipt.

If a defendant ordered to pay support under this section is incarcerated and unable to pay the required support while incarcerated, the defendant has up to one year after release from incarceration to begin payment, including entering a payment plan to address any arrearage. If the defendant's support payments are set to terminate but the defendant's obligation is not paid in full, the support payments must continue until the entire arrearage is paid.

If a civil action is brought on behalf of a child against the defendant prior to a sentencing court ordering support payments as restitution under this section, and the child obtains a judgment in the civil action, the court may not order support under this section. If the sentencing court orders support under this section and the child later obtains a judgment in a civil action brought on behalf of the child, the court must offset the support order by the amount of the judgment awarded in the civil action pursuant to § 23A-28-9.

Signed March 18, 2024

Chapter 94

(House Bill 1039)

An Act to provide for the payment of legal expenses originating from crime committed at a facility maintained by the Department of Corrections.

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

Section 1. That § 1-11-1 be AMENDED:

1-11-1. ~~The duties~~It is the duty of the attorney general ~~shall be~~:

(1) To appear for the state and prosecute and defend all actions and proceedings, civil or criminal, in the Supreme Court, in which the state shall be interested as a party;

(2) When requested by the Governor or either branch of the Legislature, or whenever, in ~~his~~ the judgment of the attorney general, the welfare of the state demands, to appear for the state and prosecute or defend, in any court or before any officer, any cause or matter, civil or criminal, in which the state may be a party or interested;

(3) To attend to all civil cases remanded by the Supreme Court to the circuit court, in which the state shall be a party or interested;

(4) To prosecute, at the request of the Governor, state auditor, or state treasurer, any official bond or contract in which the state is interested, upon a breach thereof, and to prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with either of their departments;

(5) To consult with, advise, and exercise supervision over the several state's attorneys of the state in matters pertaining to the duties of their office, and ~~he~~ the attorney general shall be authorized and it is made ~~his~~ the duty of the office, whenever in ~~his~~ the attorney general's judgment any opinion written by ~~him~~ the attorney general will be of general interest and value, to mail either written or printed copies of such opinion to the auditor-general and to every state's attorney and county auditor in the state;

(6) When requested, to give ~~his~~ an opinion in writing, without fee, upon all questions of law submitted to ~~him~~ the attorney general by the Legislature or either branch thereof, or by the Governor, auditor, or treasurer;

(7) When requested by the state auditor, treasurer, or commissioner of school and public lands, to prepare proper drafts for contracts, forms, and other writings, which may be wanted for use of the state;

(8) To report to the Legislature, or either branch thereof, whenever requested, upon any business relating to the duties of ~~his~~ the office;

(9) To prosecute state officers who neglect or refuse to comply with the provisions of statutes of this state prohibiting officers of the state from accepting any money, fee, or perquisite other than salary for performance of duties connected with ~~his~~ the office or paid because of holding such office and the statute requiring issue and delivery and filing of prenumbered duplicate receipts and accounting for money received for the state;

(10) To pay into the state treasury all moneys received by ~~him~~ the attorney general, belonging to the state, immediately upon the receipt thereof;

(11) To prosecute any criminal action that was committed by an inmate under confinement in a facility operated by the Department of Corrections; and

(12) To attend to and perform any other duties which may from time to time be required by law.

Section 2. That § 23A-40-8 be AMENDED:

23A-40-8. ~~Counsel~~Except as provided below, counsel assigned pursuant to § 23A-40-6 and subdivision 23A-40-7(2) shall, after the disposition of the cause, be paid by the county in which the action is brought, or, in case of a parole revocation, by the county from which the inmate was sentenced, a reasonable and

just compensation for ~~his~~ the services and for necessary expenses and costs incident to the proceedings in an amount to be fixed by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court.

If the cause originated from a criminal offense committed by an inmate under confinement in a facility operated by the Department of Corrections, the Department of Corrections must, after the disposition of the cause, pay counsel assigned pursuant to § 23A-40-6, a reasonable and just compensation for the services and for necessary expenses and costs incident to the proceedings in an amount to be fixed by a judge of the circuit court or a magistrate judge within guidelines established by the presiding judge of the circuit court.

Section 3. That § 23A-40-10 be AMENDED:

23A-40-10. If the court finds that funds are available for payment from or on behalf of a defendant to carry out, in whole or in part, the provisions of this chapter, the court may order that the funds be paid, as court costs or as a condition of probation, to the court for deposit with the state, county, or municipal treasurer, to be placed in the state, county, or municipal general fund or in the public defender fund in those counties establishing the office pursuant to subdivision 23A-40-7(1) as a reimbursement to the county or municipality to carry out the provisions of this section. The court may also order payment to be made in the form of installments or wage assignments, in amounts set by a judge of the circuit court or a magistrate judge, either during the time a charge is pending or after the disposition of the charge, regardless of whether the defendant has been acquitted or the case has been dismissed by the prosecution or by order of the court. The provisions of this section also apply to persons who have had counsel appointed under chapters 26-7A, 26-8A, 26-8B, and 26-8C. The reimbursement is a credit against any lien created by the provisions of this chapter against the property of the defendant.

Signed March 14, 2024

Chapter 95

(House Bill 1057)

An Act to create the Commission on Indigent Legal Services and Office of Indigent Legal Services, to make an appropriation for reimbursing county indigent legal services, and to declare an emergency.

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

Section 1. That a NEW SECTION be added to title 23A:

The terms used in this chapter mean:

(1) "Attorney," a person licensed to practice law in this state as provided in chapter 16-16, with active membership and in good standing of the State Bar of South Dakota;

(2) "Chief defender," the attorney appointed by the commission to head the Office of Indigent Legal Services;

(3) "Commission," the Commission of Indigent Legal Services;

(4) "Effective assistance of counsel," legal defense services in a criminal case that comply with the standards required by state and federal law;

(5) "Indigent," a person who does not have sufficient money, credit, or property to employ an attorney and pay for the necessary expenses of representation;

(6) "Indigent representation services," legal defense services provided by an attorney to an indigent person where there is a right to counsel under state or federal law;

(7) "Office of Indigent Legal Services," or "office," a state government entity that provides direct indigent representation services and implements the objectives of the commission;

(8) "Private appointed attorney," an attorney who is not employed by the government and who provides indigent representation services; and

(9) "Public defender," an attorney employed by the government who provides indigent representation services.

Section 2. That a NEW SECTION be added to title 23A:

There is hereby created the Commission on Indigent Legal Services. The commission shall oversee indigent representation services in South Dakota to ensure the effective assistance of counsel where there is a right to counsel under state or federal law.

Section 3. That a NEW SECTION be added to title 23A:

The Commission on Indigent Legal Services consists of nine members appointed as follows:

(1) Three members, not less than two of which are attorneys licensed in South Dakota, appointed by the Governor, that have significant experience in criminal proceedings or a demonstrated commitment to indigent defense, one initially appointed for a term of four years, one initially appointed for a term of three years, and one initially appointed for a term of two years;

(2) Three members, not less than two of which are attorneys licensed in South Dakota, appointed by the chief justice of the Supreme Court, that have experience in criminal proceedings or a demonstrated commitment to indigent defense, one initially appointed for a term of four years, one initially appointed for a term of three years, and one initially appointed for a term of two years;

(3) One member appointed by the president pro tempore of the Senate, initially appointed for a term of three years;

(4) One member appointed by the speaker of the House of Representatives, initially appointed for a term of three years; and

(5) One member appointed by the executive director of the South Dakota Association of County Commissioners, initially appointed for a term of two years.

Thereafter, each appointment shall serve for a term of four years. Members may be reappointed for successive four-year terms, but may not serve for more than twelve years.

The commission shall organize and elect a chairperson at its first meeting. The commission shall hold meetings at the call of the chairperson, or at the request of a majority of its members. No current law enforcement official or prosecutor

may serve as a member of the commission. Only one actively serving judge, one private appointed attorney, and one public defender may serve on the commission, and these members may not serve as the chairperson.

Section 4. That a NEW SECTION be added to title 23A:

The commission may remove a member for good cause by a two-thirds vote of the commission. The appointing authority that made the initial appointment shall appoint a member to fill the vacancy for the length of the unexpired term.

Section 5. That a NEW SECTION be added to title 23A:

No commission member may receive compensation for services on the commission. A member shall receive per diem as provided by § 4-7-10.4 and travel expenses for attending commission meetings.

Section 6. That a NEW SECTION be added to title 23A:

The commission shall oversee indigent representation services to ensure effective assistance of counsel in the state court system where there is a right to counsel under state or federal law. The commission shall:

(1) Appoint a chief defender to head the Office of Indigent Legal Services, as provided in section 9 of this Act;

(2) Explore mechanisms for the state to ensure adequate funding for indigent representation services statewide, including state and local governments sharing the cost of such services;

(3) Advocate for resources and policies necessary to ensure effective indigent representation services statewide; and

(4) Promulgate rules pursuant to chapter 1-26 to:

(a) Establish minimum training standards, maximum caseloads allowed, and procedures to reassign conflict cases;

(b) Monitor, evaluate, and enforce compliance with the standards established in subsection (4)(a);

(c) Establish hourly rates and travel reimbursement rates for attorneys appointed or contracted by the Office of Indigent Legal Services that are comparable to those paid to other attorneys for similar case types;

(d) Provide auditing and monitoring of billings for private appointed attorneys and vendor compensation to standardize compensation rates established in subsection (4)(c); and

(e) Provide for the collection of data from state and local systems to inform the oversight duties of the commission.

Section 7. That a NEW SECTION be added to title 23A:

There is hereby created the Office of Indigent Legal Services. The office shall provide indigent representation services and shall oversee indigent representation services in the state courts to ensure the effective assistance of counsel where there is a right to counsel under state or federal law.

Section 8. That a NEW SECTION be added to title 23A:

The Office of Indigent Legal Services shall provide statewide indigent

representation services in direct appeals in criminal cases, habeas corpus appeals, and abuse or neglect of a child appeal cases. The office may expand its scope of indigent representation services to include additional case types as approved by the commission. The office shall determine the method of delivering indigent representation services by utilizing public defenders, private appointed attorneys, or a combination of both. The office may contract with private appointed attorneys to deliver indigent representation and shall provide oversight and review of any contracted attorneys.

Section 9. That a NEW SECTION be added to title 23A:

The commission shall appoint a chief defender by a majority vote. The chief defender shall head and maintain the Office of Indigent Legal Services. The chief defender shall serve for a term of four years. The commission may reappoint the chief defender to successive terms of four years. There are no term limits. The commission may remove the chief defender during an unexpired term by a two-thirds vote of the commission.

Section 10. That a NEW SECTION be added to title 23A:

The chief defender must be an attorney with the following qualifications:

(1) Experience in indigent representation services in criminal cases;

(2) Commitment to ensuring effective assistance of counsel to all the indigent people of the state; and

(3) Demonstrated experience or potential in management, budget, and the state legislative process.

The chief defender may not engage in the private practice of law.

Section 11. That a NEW SECTION be added to title 23A:

The chief defender may:

(1) Hire or contract for attorney, professional, technical, and support personnel;

(2) Establish an administrative office within the Office of Indigent Legal Services;

(3) Exercise supervisory authority over all employees of the office;

(4) Assist the commission in the development of standards related to indigent representation services;

(5) Monitor, evaluate, and enforce compliance with standards adopted by the commission;

(6) Develop strategic plans, and conduct research and studies, to inform the objectives of the commission;

(7) Develop strategic plans to expand the office's scope of providing indigent representation to include additional case types;

(8) Establish branch public defender offices;

(9) Provide training and support to indigent defense attorneys statewide; and

(10) Perform other duties as may be prescribed by the commission.

Section 12. That a NEW SECTION be added to title 23A:

The Commission on Indigent Legal Services and Office of Indigent Legal Services is attached to the Unified Judicial System for budgetary purposes only.

Section 13. That a NEW SECTION be added to title 23A:

The Commission on Indigent Legal Services is subject to chapter 1-26. The commission shall serve a copy of a proposed rule and any publication described in § 1-26-6.6 upon the chair of the commission to which it is attached for the chair's written approval to proceed. After receiving the written approval of the chair, the commission shall serve the director of the Legislative Research Council and the commissioner of the Bureau of Finance and Management as required pursuant to subdivision 1-26-4(2).

Section 14. That a NEW SECTION be added to title 23A:

The Office of Indigent Legal Services may enter into joint powers agreements pursuant to chapter 1-24 with state agencies for administrative support, accounting, payroll, and personnel services.

Section 15. There is hereby appropriated from the general fund the sum of $3,000,000 to the Commission on Indigent Legal Services to reimburse the cost of indigent legal services to counties.

Section 16. The Commission on Indigent Legal Services shall distribute the moneys described in section 15 of this Act to the counties based on the following formula. The commission shall, within sixty days of the end of the fiscal year, determine and verify from receipts and expenditure records the total expenditures by all counties for court appointed attorneys and public defender offices. The commission shall then establish a percentage ratio of the total expenditures by counties for court appointed attorneys and public defender offices. The commission shall apply that percentage ratio to each county's gross expenditure for court appointed attorneys and public defender offices to determine its respective payment.

Section 17. The chief defender of the Office of Indigent Legal Services shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 18. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 19. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

CORRECTIONAL FACILITIES AND PAROLE

Chapter 96
(Senate Bill 9)

An Act to further limit applications for clemency for violent crime offenders sentenced to life imprisonment.

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

Section 1. That § 24-15A-23 be AMENDED:

24-15A-23. ~~An~~ The board may not hear an application for clemency ~~may not be heard by the board~~ for one year after the date of the judgment. If an application for clemency is denied, an inmate may not again present an application for clemency for a period of one year. If an application for clemency is denied for an inmate convicted of a crime of violence, as defined in subdivision 22-1-2(9), and sentenced to life imprisonment, the inmate may not again present an application for clemency for a period of four years.

Section 2. That § 24-15-10 be AMENDED:

24-15-10. If an inmate's application for parole is denied, the inmate may not again present an application before the board for a period of eight months. A continuance of an application for parole is not a denial. An application for clemency may not be heard for one year after the date of the judgment. If an application for clemency is denied, an inmate may not again present an application for clemency for a period of one year. If an application for clemency is denied for an inmate convicted of a crime of violence, as defined in subdivision 22-1-2(9), and sentenced to life imprisonment, the inmate may not again present an application for clemency for a period of four years.

Signed March 4, 2024

DOMESTIC RELATIONS

Chapter 97
(House Bill 1088)

An Act to remove the option for a court services officer to prepare documentation in an adoption proceeding.

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

Section 1. That § 25-6-10 be AMENDED:

25-6-10. Whenever a person, or a husband and wife jointly, petition the circuit court for leave to adopt a minor child, the judge of the circuit court ~~shall~~

must fix a time for hearing not less than ten days from the filing of ~~such~~ the petition. ~~The petition may be filed~~ A petitioner may file the petition with the circuit court before the six-month period required by § 25-6-9 has passed. The circuit court may, in the case of a stepparent adopting a stepchild, and shall in all other cases, direct ~~a court services officer or other officer of the court or~~ an agent of the Department of Social Services or ~~some other discreet and~~ another competent person to make a careful and thorough investigation of the matter and report ~~such~~ the findings in writing to the court. ~~A~~ The investigative report must include the history of any previous child support obligations of each prospective adoptive parent ~~shall be included in the investigative report~~.

Signed February 28, 2024

MINORS

Chapter 98
(House Bill 1245)

An Act to revise provisions related to the custody of an alleged delinquent child before and after a temporary custody hearing.

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

Section 1. That § 26-8C-3 be AMENDED:

26-8C-3. An apparent or alleged delinquent child taken into temporary custody by a law enforcement officer prior to a temporary custody hearing shall be released to the child's parents, guardian, or custodian unless the parents, guardian, or custodian cannot be located, or in the judgment of the intake officer, are not suitable to receive the child, in which case the child shall be placed in shelter. A child may not be placed in detention unless the intake officer finds that the parents, guardian, or custodian are not available or are not suitable to receive the child, and finds at least one of the following circumstances exists:

(1) The child is a fugitive from another jurisdiction;

(2) The child is charged with a violation of § 22-22-7, a crime of violence under subdivision 22-1-2(9), or a serious property crime, which, if committed by an adult, would be a felony;

(3) The child is already held in detention or on conditional release in connection with another delinquency proceeding;

(4) The child has a demonstrable recent record of willful failures to appear for juvenile court proceedings;

(5) The child has a demonstrable recent record of violent conduct;

(6) The child has a demonstrable recent record of adjudications for serious property offenses;

(7) The child is under the influence of alcohol, inhalants, or a controlled drug or substance and detention is the least restrictive alternative in view of the gravity of the alleged offense and is necessary for the physical safety

of the child, the public, and others; ~~or~~

(8) The child has failed to comply with court services or a court ordered program; or

(9) There are specific, articulated circumstances that justify detention, not to exceed five days, for the protection of the child from potentially immediate harm to the child or to others.

The shelter or detention authorized ~~shall~~ must be the least restrictive alternative available.

Section 2. That § 26-7A-21 be AMENDED:

26-7A-21. If the child is an apparent, alleged, or adjudicated delinquent child, after the temporary custody hearing the court shall release the child from temporary custody to the child's parents, guardian, or custodian, with or without restriction or condition or upon written promise of the child's parents, guardian, or custodian regarding the custody and supervision of the child and the subsequent appearance of the child in court at a time, date, and place to be determined by the court, unless the court finds that the child should continue to be held in temporary custody of court services for any of the following reasons:

(1) The child is a fugitive from another jurisdiction;

(2) The child is charged with a violation of § 22-22-7, a crime of violence under subdivision 22-1-2(9), or a property crime, which, if committed by an adult, would be a felony;

(3) The child is already held in detention or on conditional release in connection with another delinquency proceeding;

(4) The child has a demonstrable recent record of willful failures to appear at juvenile court proceedings;

(5) The child has a demonstrable recent record of violent conduct;

(6) The child has a demonstrable recent record of adjudications for serious property offenses;

(7) The child is still under the influence of alcohol, inhalants, or a controlled drug or substance; ~~or~~

(8) The child has failed to comply with court services or a court ordered program; or

(9) There are specific, articulated circumstances that justify detention, not to exceed five days, for the protection of the child from potentially immediate harm to the child or to others.

Signed March 18, 2024

Chapter 99

(House Bill 1087)

An Act to modify the definitions of a child in need of supervision and a delinquent child.

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

Section 1. That § 26-8B-2 be AMENDED:

26-8B-2. For purposes of this chapter, a child in need of supervision is a child:

(1) Of compulsory school age who is habitually absent from school without legal excuse;

(2) Who has run away from home or is otherwise beyond the control of the child's parent, guardian, or custodian;

(3) Whose behavior or condition endangers the child's own welfare or the welfare of others;

(4) Who has violated any federal or state law or regulation or local ordinance for which there is not a penalty of a criminal nature for an adult, other than ~~a violation of subdivision 34-46-2(2) or~~ a petty offense;

(5) Who has violated § 32-23-21 or 35-9-2; or

(6) Who engages in prostitution by offering to engage in sexual activity for a fee or other compensation.

Section 2. That § 26-8C-2 be AMENDED:

26-8C-2. In this chapter and chapter 26-7A, the term~~,~~ "delinquent child~~,~~" means any child ten years of age or older who, regardless of where the violation occurred, has violated any federal, state, or local law or regulation for which there is a penalty of a criminal nature for an adult, except state or municipal hunting, fishing, boating, park, or traffic laws that are classified as misdemeanors, ~~or~~ petty offenses, or any violation of § ~~35-9-2 or~~ 32-23-21, 35-9-2, or subdivision 34-46-2(2).

Signed February 28, 2024

Chapter 100

(Senate Bill 47)

An Act to revise the incentive program for juvenile diversion opportunities.

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

Section 1. That § 26-8D-2 be AMENDED:

26-8D-2. The Department of Corrections shall ~~develop~~ provide a fiscal incentive program to incentivize county use of diversion opportunities. ~~Beginning on September 1, 2016, any application for~~ To receive funding from the fiscal incentive program ~~shall be submitted~~, a county must submit an application to the ~~Department of Corrections~~ department before September first of each year ~~by a county~~. ~~The fiscal incentive program includes the following requirements:~~

~~(1) An~~The application ~~shall~~ must include data on the number of children annually referred by the county to a diversion program~~, as well as~~ and the number of ~~referred~~ children referred that successfully ~~completed~~ complete a diversion program. ~~In addition, each~~ For each child referred to diversion, the application ~~shall provide specific data about the children the county referred to diversion, including~~ must specify the type of program or type of diversion the child was referred to, the name and location of each diversion provider, and whether the

child completed ~~a~~ the diversion program~~;~~.

~~(2) The~~Each qualifying county shall receive an allotment of funds ~~shall be~~ based on the number of children referred by ~~each~~ the county that complete a court-approved diversion program at a rate of ~~two~~ seven hundred and fifty dollars per child. ~~That amount shall be prorated if~~ If the number of children completing a diversion program statewide results in an amount that exceeds the allotted funds~~;~~

~~(3) No county may receive any state funds provided by this section until its application has been received; and~~

~~(4) Payments to counties shall be transferred~~ , the allotted amount for each county must be prorated. The department shall transfer payments to counties on or about November first each year.

The ~~Department of Corrections~~ department shall report data collected from participating counties semiannually to the ~~oversight council~~ Juvenile Justice Oversight Council.

Signed March 18, 2024

PUBLIC WELFARE AND ASSISTANCE

Chapter 101

(House Bill 1077)

An Act to provide for the disbursement of the catastrophic county poor relief fund to the participating counties in the event of the discontinuance of the fund.

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

Section 1. That § 28-13A-5 be AMENDED:

28-13A-5. If ~~at the end of any calendar year less~~ fewer than thirty-five counties elect to remain in the catastrophic county poor relief fund at the end of any calendar year~~, a final assessment shall be made to reestablish the reserve~~, the fund ~~shall be~~ must be discontinued and the reserve ~~shall revert to the state general fund~~ reverted to the counties participating in the fund at the time the fund is discontinued in proportion to the amount of money that each county contributed pursuant to § 28-13A-9. If the fund balance is negative when the fund is discontinued, a final assessment must be made on and paid in full by all counties participating in the fund at the time the fund is discontinued in proportion to the amount of money each county received, pursuant to this chapter, to bring the fund balance to zero.

Signed February 15, 2024

HIGHWAYS AND BRIDGES

Chapter 102
(Senate Bill 37)

An Act to revise provisions regarding repair and maintenance of mail routes.

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

Section 1. That § 31-13-20 be AMENDED:

31-13-20. ~~The~~Each expense ~~of~~ incurred for repair and maintenance pursuant to § 31-13-19 ~~shall~~ must be paid, on the presentment of itemized and verified vouchers approved by the county highway superintendent, to the county auditor, by warrants drawn on the county treasurer payable out of township funds ~~belonging to the township which are in the hands of the county treasurer or out of the first funds belonging to such township which thereafter come into the county treasury; but such~~. The expense incurred by the county highway superintendent ~~shall~~ may not exceed ~~the sum of~~ two thousand and five hundred dollars for ~~any one~~ each mile of road during ~~any~~ each year.

Signed February 5, 2024

Chapter 103
(Senate Bill 4)

An Act to revise provisions regarding township contracts for snow removal.

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

Section 1. That § 31-13-27 be AMENDED:

31-13-27. ~~Contracts pursuant to~~If the projected total cost of a contract for winter road maintenance under § 31-13-26 ~~are authorized without advertising for bids if the total cost in a winter's season will not exceed thirty five hundred dollars. If the cost will be~~ is less than ~~thirty five hundred~~ ten thousand dollars, the township supervisors ~~may make contracts with any person, firm, or corporation, including any county, for the removal of snow on its roads, or repair of such roads damaged from or caused by melting snow, either at an hourly or day rate~~ are not required to advertise for bids for the contract.

If ~~it is anticipated~~ the township supervisors anticipate that ~~the cost in any one~~ snow removal or road repair costs during the winter season would exceed ~~that sum~~ ten thousand dollars, the ~~snow removal or road repair shall be done by bids as provided by law~~ township shall advertise for bids. In case of ~~such~~ road damage, the ~~work may be undertaken on bids as above specified~~ township may advertise for bids, or ~~upon an~~ contract as specified in this section either at an hourly or day rate ~~for such work~~.

Signed February 5, 2024

Chapter 104

(House Bill 1229)

An Act to add a county as able to be assigned responsibility for secondary highways on municipal boundaries.

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

Section 1. That § 31-17-16 be AMENDED:

31-17-16. The secondary highways on the boundary line of any municipality ~~shall~~ must be assigned to ~~such~~ the municipality and adjoining civil township, or unorganized territory as provided in §§ 31-17-5 and 31-17-6.

Section 2. That a NEW SECTION be added to chapter 31-17:

A highway on the county highway system that is also on the boundary line of any municipality must be assigned to the charge of the municipality, board of supervisors of adjoining civil townships, or the board of county commissioners in the case of unorganized territory as may be agreed upon by the respective governing bodies and the secretary of transportation and in case of disagreement, as determined by the secretary of transportation. Any highway segment assigned exclusively to the charge of a municipality or board of supervisors of a civil township is not part of the county highway system.

Signed March 6, 2024

Chapter 105

(Senate Bill 188)

An Act to modify the time before which rural access infrastructure grant moneys must be expended or obligated.

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

Section 1. That § 31-34-3 be AMENDED:

31-34-3. Each county shall establish a rural access infrastructure fund for the deposit of moneys received pursuant to this chapter. The board of county commissioners may only distribute fund moneys for the following expenses:

(1) Engineering, hydrological studies, planning, materials, and other costs as necessary to plan for and complete the projects;

(2) Construction, rehabilitation, or replacement of small structures located in townships complying with the requirements of this chapter;

(3) Construction, rehabilitation, or replacement of small structures described in a county highway and bridge improvement plan that are located on county secondary highways.

The moneys may not be used on no maintenance roads or minimum maintenance roads.

~~Moneys not obligated or spent from a county's fund may be used for the expenses until~~ Moneys received under this chapter must be obligated or spent by the county before the end of the 2029 fiscal year. All other unobligated or unspent moneys may be used for expenses until reverted pursuant to § 4-8-21. Moneys may only be used for the expenses of those small structures inventoried with the department, as referenced in § 31-34-2~~, by June first of the preceding fiscal year~~.

Signed February 28, 2024

Chapter 106

(Senate Bill 124)

An Act to revise the eligibility of roads for the rural access infrastructure fund.

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

Section 1. That § 31-34-3 be AMENDED:

31-34-3. Each county shall establish a rural access infrastructure fund for the deposit of moneys received pursuant to this chapter. The board of county commissioners may only distribute fund moneys for the following expenses:

(1) Engineering, hydrological studies, planning, materials, and other costs as necessary to plan for and complete the projects;

(2) Construction, rehabilitation, or replacement of small structures located in townships complying with the requirements of this chapter;

(3) Construction, rehabilitation, or replacement of small structures described in a county highway and bridge improvement plan that are located on county secondary highways.

The moneys may not be used on a no maintenance ~~roads or minimum maintenance roads~~ road.

Moneys not obligated or spent from a county's fund may be used for the expenses until reverted pursuant to § 4-8-21. Moneys may only be used for the expenses of those small structures inventoried with the department, as referenced in § 31-34-2, by June first of the preceding fiscal year.

Section 2. That § 31-34-5 be AMENDED:

31-34-5. The board of county commissioners shall, at a minimum, consider the following criteria in awarding rural access infrastructure grants:

(1) Traffic use of the highway;

(2) Public safety;

(3) Residential, commercial, recreational, and other uses of the highway;

(4) Cost of the project;

(5) Length of detour if the project is not completed;

(6) Number of residences, farms, and ranches served by the project;

(7) Contribution from the township or others to the project and the ability of

the township to fund the project without utilizing the rural access infrastructure fund;

(8) Confirmation the project is not located on a no maintenance ~~or minimum maintenance~~ road;

(9) Hydrological impact;

(10) If the highway does not terminate into a field entrance, driveway, single residence, farm, or ranch;

(11) The application, or group of applications, that best serves the citizens of this state; and

(12) Any other matters deemed applicable by the board of county commissioners.

The decisions of the county commission ~~shall~~ must be final and nonappealable. However, a denied application may be submitted in a subsequent year.

Signed March 15, 2024

MOTOR VEHICLES

Chapter 107

(House Bill 1051)

An Act to make technical changes to provisions regarding the compensation of agents.

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

Section 1. That § 32-2-10 be AMENDED:

32-2-10. The compensation of each ~~of the agents, patrolmen, and employees~~ agent, patrolman, and employee of the Division of Highway Patrol ~~shall be fixed~~ is set by the Department of Public Safety. Any employee who has worked five years ~~under the provisions of chapter 3-7 shall be~~ is entitled to longevity compensation each month equal to four dollars for each year of all continuous service up to a maximum of twenty-five years. ~~Such~~ The longevity compensation ~~shall~~ may not be affected by any other compensation and classification plan except that the secretary of public safety shall distribute the longevity compensation in the same manner and form as prescribed for other state employees in § 3-8-6.

Signed February 5, 2024

Chapter 108

(Senate Bill 112)

An Act to establish a non-resident title fee.

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

Section 1. That chapter 32-3 be amended with a NEW SECTION:

Any owner who chooses to title a motor vehicle, off-road vehicle, or snowmobile in South Dakota, but who does not have a South Dakota-issued driver license or identification card, or a physical address in South Dakota, shall pay a one-hundred-dollar fee in addition to the title application fee imposed by § 32-3-18. The additional fee does not apply to title correction transactions or duplicate title transactions. Half of the fee must be deposited into the state motor vehicle fund and half must be deposited into the county general fund.

Section 2. That chapter 32-3A be amended with a NEW SECTION:

Any owner who chooses to title a boat in South Dakota, but who does not have a South Dakota-issued driver license or identification card, or a physical address in South Dakota, shall pay a one-hundred-dollar fee in addition to the title application fee imposed by § 32-3A-25. The additional fee does not apply to title correction transactions or duplicate title transactions. Half of the fee must be deposited into the state motor vehicle fund and half must be deposited into the county general fund.

Section 3. That § 32-3-1 be AMENDED:

32-3-1. Terms used in chapters 32-3 to 32-5B, inclusive, mean:

(1) "Commercial motor vehicle," any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit~~,~~; or designed, used, or maintained primarily for the transportation of property, and not specifically excluded under § 32-9-3;

(2) "Component part," any part of a motor vehicle, trailer, or semitrailer other than a tire, having a vehicle identification number;

(3) "Dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used vehicles~~,~~; or who is engaged wholly or in part in the business of selling new, or new and used vehicles, whether or not ~~such~~ the vehicles are owned by that person;

(4) "Department," Department of Revenue;

(4A) "Electric bicycle," as that term is defined in § 32-20B-9;

(4B) "Gross vehicle weight rating," the value specified by the manufacturer as the loaded weight of a single vehicle;

(5) "Junking certificate," a certificate of ownership, which may not be restored to a title document which allows highway use, issued by the department to the owner of a vehicle ~~which~~ that is going to be dismantled and sold for parts;

(5A) "Low-speed vehicle," a four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved, level surface.

(6) "Manufactured home," a structure, transportable in one or more sections, ~~which~~ that is eight body feet or more in width or forty body feet or more in length in the traveling mode, or is three hundred twenty ~~or more~~ square feet or more when erected on a site; ~~which~~ that is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities; and ~~which~~ that contains the plumbing, heating, air conditioning, and electrical systems therein. The term includes any structure ~~which~~ that meets all the requirements of this subdivision and any other structure ~~which~~ that has been certified by the secretary of housing and urban development. The term does not include a recreational park trailer;

(7) "Manufacturer," any person, firm, corporation, limited liability company, or association engaged in the manufacture of new motor vehicles as a regular business;

(8) "Mobile home," a movable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and designed to be connected to utilities for year-round occupancy. The term includes:

(a) Units containing parts that may be folded, collapsed, or telescoped when being towed and that may be expanded to provide additional cubic capacity; and

(b) Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

The term does not include a recreational park trailer;

(9) "Moped," a motor-driven cycle equipped with two or three wheels. If a combustion engine is used, the maximum piston or rotor displacement ~~shall be~~ is fifty cubic centimeters regardless of the number of chambers in such power source. The power source ~~shall~~ must be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. The term does not include an electric bicycle;

(10) "Motorcycle," includes motorcycles, motorbikes, mopeds, bicycles with motor attached, and all motor-operated vehicles of the bicycle or tricycle type, whether the motive power be a part thereof or attached thereto, and having a saddle or seat with the driver sitting astride or upon it, or a platform on which the driver stands, but excluding a tractor. The term does not include an electric bicycle;

(11) "Motor vehicle," automobiles, motor trucks, motorcycles, house trailers, trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, farm wagons, freight trailers, vehicles that run only on rails or tracks, electric bicycles, and off-road vehicles as defined in § 32-20-1;

(12) "New motor vehicle," any motor vehicle to which a manufacturer's statement of origin has not been transferred, or is a motor vehicle on which title was issued from the manufacturer's statement of origin or manufacturer's certificate of origin and is still in the name of the first person who took title to the vehicle;

(13) "Noncommercial motor vehicle," any motor vehicle not classified as a commercial motor vehicle;

(14) "Noncommercial trailer or semitrailer," any trailer or semitrailer not used or maintained for the transportation of persons or property for hire, compensation, or profit;

(14A) "Notation," a physical or electronic process of recording a lien on a certificate of title, a manufacturer's statement of origin, or a manufacturer's certificate of origin;

(15) "Off-road vehicle," any self-propelled, two- or more-wheeled vehicle designed primarily to be operated on land other than a highway and includes all terrain vehicles, dune buggies, and any vehicle whose manufacturer's statement of origin (MSO) or manufacturer's certificate of origin (MCO) states that the vehicle is not for highway use. The term does not include a farm vehicle or an electric bicycle as defined in this section;

(16) "Owner," any person, firm, association, trust, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days; as between contract vendor and contract vendee, the term, owner, shall refer refers to the contract vendee, unless the contrary clearly appears from the context of chapters 32-3 to 32-5B, inclusive, or a person or trust having legal possession or title;

(17) "Rebuilt vehicle," any motor vehicle, trailer, or semitrailer that has been rebuilt by the addition or deletion of assemblies, subassemblies, parts, or component parts so that upon gross visual examination, it does not appear to be the vehicle described in the certificate of title last issued for the vehicle, or whose title has been marked as rebuilt by this state or another state or jurisdiction;

(17A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use and which:

(a) Is built on a single chassis mounted on wheels;

(b) Has a gross trailer area not exceeding four hundred square feet in the setup mode;

(c) Is certified by the manufacturer as complying with American National Standards Institute Standard No. A119.5 in effect on January 1, 2008; and

(d) Has at least a seventeen-digit identification number and the manufacturer has designated the vehicle as a recreational park model on the manufacturer statement of origin;

(18) "Recreational vehicle," a vehicular portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, vacation, or seasonal uses, and that is permanently identified as a travel trailer or a recreational park trailer by the manufacturer of the trailer;

(19) "Road tractor," any motor vehicle designed and used for drawing other vehicles, except farm or logging tractors used exclusively for farming or logging, and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn;

(20) "Secretary," secretary of revenue;

(21) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin

assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle;

(22) "State," includes the territories and the federal districts of the United States;

(23) "Trailer," any vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle;

(24) "Truck tractor," any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn;

(25) "Used vehicle," any motor vehicle to which title has been issued to someone other than the first person who took title to the motor vehicle from the manufacturer's statement of origin or manufacturer's certificate of origin; and

(26) "Vehicle identification number," the number assigned by the manufacturer or by the department for the purpose of identifying the vehicle. The term includes any number or letters assigned by the manufacturer for the purpose of identifying a component part and any such number stamped on a vehicle or part according to law or the rules promulgated by the department for the purpose of identifying the vehicle or part.

Signed March 4, 2024

Chapter 109

(House Bill 1120)

An Act to provide special motor vehicle license plates for advanced life support personnel and emergency medical technicians.

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

Section 1. That § 32-5-113 be AMENDED:

32-5-113. Any owner of a motor vehicle, who is a resident of this state, and has a valid South Dakota driver license or nondriver identification card, who is a firefighter, an advanced life support personnel, or emergency medical technician licensed pursuant to chapter 36-4B, and who has complied with ~~all of the laws of this~~ state law in relation to the registration of a motor vehicle, may receive plates bearing a special number and design, and designating the person as a firefighter, advanced life support personnel, or emergency medical technician. The distinctive number plates ~~shall~~ for a firefighter must be designed by the fire marshal ~~and~~. The distinctive number plates for advanced life support personnel and emergency medical technicians must be designed by the secretary of health. The number plates are subject to the approval of the Department of Revenue. The special plates ~~shall~~ must be displayed as set forth in § 32-5-98. These plates may only be used on automobiles, pickup trucks, or vans licensed pursuant to § 32-5-6 or pickup trucks pursuant to § 32-5-6.3.

Section 2. That § 32-5-114 be AMENDED:

32-5-114. In addition to the noncommercial license ~~plates~~ plate fees, a firefighter, advanced life support personnel, or emergency medical technician receiving the special license plates shall pay an additional fee of ten dollars for the initial issuance of the special license plates. The special license plate fee collected under this section ~~shall~~ must be placed in the license plate special revenue fund, as provided under § 32-5-67.

Section 3. That § 32-5-118 be AMENDED:

32-5-118. Each firefighter ~~shall~~, advanced life support personnel, or emergency medical technician must apply to the county treasurer of the county of the firefighter's, advanced life support personnel's, or emergency medical technician's residence for the issuance of special number plates for the motor vehicles owned by the firefighter, advanced life support personnel, or emergency medical technician. The firefighter, advanced life support personnel, or emergency medical technician, in order to receive the special plates, ~~shall have paid~~ must pay the registration fee for the plates.

Section 4. That § 32-5-119 be AMENDED:

32-5-119. A failure on the part of a firefighter, advanced life support personnel, or emergency medical technician to make application to the Department of Revenue for ~~such~~ the special number plates as provided in § 32-5-116 will result in ~~such member~~ the applicant being required to accept regular number plates for ~~his~~ the applicant's motor vehicle.

Section 5. That § 32-5-120 be AMENDED:

32-5-120. If ~~any~~ a firefighter, advanced life support personnel, or emergency medical technician is discharged~~, separated~~, or retires, the firefighter ~~shall~~, advanced life support personnel, or emergency medical technician must surrender the special number plates identifying ~~him or her~~ the person as a firefighter, advanced life support personnel, or emergency medical technician. The special plates ~~shall~~ must be surrendered to the secretary ~~of revenue~~, who shall make the necessary changes in the registration file. The firefighter, advanced life support personnel, or emergency medical technician shall then obtain regular number plates.

Section 6. That § 32-5-121 be AMENDED:

32-5-121. If at any time a motor vehicle subject to the special number plates issued for the firefighter ~~shall be~~, advanced life support personnel, or emergency medical technician is sold, conveyed, or otherwise transferred by the firefighter, advanced life support personnel, or emergency medical technician to whom the special number plates have been issued, the firefighter ~~shall~~, advanced life support personnel, or emergency medical technician must notify the ~~Department of Revenue~~ department. The ~~Department of Revenue~~ department shall process a new registration indicating that the special plates issued to the motor vehicle ~~to which the special plates are to~~ must be transferred. The secretary shall make the necessary changes in the file. The department shall notify the applicant of any corrections ~~which~~ that need to be made.

Section 7. That § 32-5-122 be AMENDED:

32-5-122. All statutes of this state relating to the registration of motor vehicles~~, and~~; the titling and licensing of motor vehicles~~,~~; the fees for registering, titling, and licensing of motor vehicles~~,~~; and the retention of plates from year to

year ~~shall be~~ are applicable to ~~firefighters~~ any firefighter, advanced life support personnel, or emergency medical technician and the special plates issued in conformity with § 32-5-113.

Section 8. This Act is effective beginning March 1, 2025.

Signed March 6, 2024

Chapter 110

(Senate Bill 194)

An Act to create a license plate for certain retired firefighters and clarify provisions regarding special firefighter license plates.

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

Section 1. That a NEW SECTION be added to chapter 32-5:

Any owner of a motor vehicle, who is a resident of this state, who served as a firefighter for more than ten years, and who has complied with all the laws of this state in relation to the registration of a motor vehicle, may receive plates bearing a special number and design or a license plate decal designating the person as a retired firefighter. The plate or decal must be designed by the fire marshal and subject to the approval of the department. The special plates must be displayed as set forth in § 32-5-98 and follow the same requirements set out in §§ 32-5-115, 32-5-119 and 32-5-221.

Section 2. That a NEW SECTION be added to chapter 32-5:

Any person applying for a retired firefighter plate shall submit an application, on a form prescribed by the secretary, and signed by the local fire chief, to the county treasurer of the applicant's county of residence. Any applicant who submits a falsified application is guilty of a Class 1 misdemeanor. The secretary may, at any time, require the applicant to provide additional information to determine if the applicant meets the retired firefighter plate requirements.

Section 3. That § 32-5-114 be AMENDED:

32-5-114. In addition to the noncommercial license ~~plates~~ plate fees, a firefighter receiving ~~the~~ special license plates provided in § 32-5-113 or retired firefighter plates provided in sections 1 and 2 of this Act, shall pay ~~an additional~~ a fee of ten dollars for the initial issuance of the special license plates. The special license plate fee collected under this section ~~shall~~ must be placed in the license plate special revenue fund, as provided under § 32-5-67.

Section 4. That § 32-5-120 be AMENDED:

32-5-120. If ~~any~~ a firefighter is discharged~~, separated~~, or retires with less than ten years of service, the firefighter ~~shall~~ must surrender the special number plates identifying ~~him or her~~ the person as a firefighter. The special plates ~~shall~~ must be surrendered to the secretary ~~of revenue~~, who shall make the necessary changes in the registration file. A firefighter may retain the special

number plates if the plates are removed from the vehicle and the secretary is made aware that the firefighter is replacing the plates. The firefighter shall obtain regular number plates.

Section 5. This Act is effective beginning March 1, 2025.

Signed February 28, 2024

Chapter 111

(House Bill 1101)

An Act to provide a special motor vehicle license plate for recipients of the Legion of Merit award.

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

Section 1. That § 32-5-155 be AMENDED:

32-5-155. Any owner may apply for a military specialty plate if the owner meets the requirements of §§ 32-5-154 to 32-5-166, inclusive. The available military specialty plates are as follows:

(1) National Guard plate;

(2) Disabled veteran plate;

(3) Veteran plate;

(4) Active duty plate;

(5) Prisoner of War plate;

(6) Pearl Harbor survivor plate;

(7) Gold Star plate;

(8) Purple Heart plate;

(9) Medal of Honor plate;

(10) Silver Star plate;

(11) Distinguished Service Cross plate;

(12) Navy Cross plate;

(13) Air Force Cross plate;

(14) Distinguished Flying Cross plate;

(15) Bronze Star with Valor plate;

(16) Bronze Star plate;

(17) Tribal veteran plate; ~~and~~

(18) Woman veteran plate; and

(19) Legion of Merit plate.

Section 2. That § 32-5-157 be AMENDED:

32-5-157. Any owner applying for a military specialty plate listed in § 32-5-155 ~~shall~~ must meet the following specific additional requirements for the respective military specialty plate:

(1) Any applicant for the National Guard plate must be an active enlisted member of the National Guard, an active warrant officer of the National Guard, an active commissioned member of the National Guard, or a retired member of the National Guard with twenty years or more of creditable service;

(2) Any applicant for the disabled veteran plate must be a veteran who has been rated as in receipt of a statutory benefit for loss or loss of use of one or more extremities, a veteran who receives a veteran's allotment for a total service-connected disability, or a veteran who has received a United States Veterans Administration K Award. The disability must have been incurred while serving on active duty during a time of war or while participating in a military mission involving armed conflict;

(3) Any applicant for the veteran plate must be an honorably discharged veteran who served on active duty;

(4) Any applicant for the active duty plate must currently be serving on active duty;

(5) Any applicant for the Prisoner of War plate must be a veteran who was a prisoner of war while serving on active duty;

(6) Any applicant for the Pearl Harbor survivor plate must have survived the attack at Pearl Harbor, Hawaii, on December 7, 1941, while serving on active duty, and have received an honorable discharge from the United States armed forces;

(7) Any applicant for the Gold Star plate must be a parent, spouse, sibling, or child of a member of the United States armed forces who died while serving this country on active duty or as a result of that service;

(8) Any applicant for the Purple Heart plate must be a veteran who received the Purple Heart as a result of the applicant's service;

(9) Any applicant for the Medal of Honor plate must be a veteran who received the Medal of Honor as a result of the applicant's service;

(10) Any applicant for the Silver Star plate must have received the Silver Star as a result of the applicant's service;

(11) Any applicant for the Distinguished Service Cross plate must have received the Distinguished Service Cross as a result of the applicant's service;

(12) Any applicant for the Navy Cross plate must have received the Navy Cross as a result of the applicant's service;

(13) Any applicant for the Air Force Cross plate must have received the Air Force Cross as a result of the applicant's service;

(14) Any applicant for the Distinguished Flying Cross plate must have received the Distinguished Flying Cross as a result of the applicant's service;

(15) Any applicant for the Bronze Star with Valor plate must have received the Bronze Star with Valor as a result of the applicant's service;

(16) Any applicant for the Bronze Star plate must have received the Bronze Star as a result of the applicant's service;

(17) Any applicant for the tribal veteran plate must be a member of a tribe and an honorably discharged veteran who served on active duty; ~~and~~

(18) Any applicant for the woman veteran plate must be a woman and an honorably discharged veteran who served on active duty; and

(19) Any applicant for the Legion of Merit plate must have received the Legion of Merit as a result of the applicant's service.

Section 3. That § 32-5-162 be AMENDED:

32-5-162. Military specialty plates ~~shall~~ must be numbered and designed by the secretary, with the exception of the National Guard plate which ~~shall~~ must be designed by the adjutant general and approved by the secretary. The military specialty plates shall meet the following specific requirements:

(1) The National Guard plate ~~shall~~ must contain a symbol indicating that the owner is a current or retired member of the National Guard;

(2) The disabled veteran plate ~~shall~~ must consist of a white background bordered on the left by a blue field with white stars and on the right by alternating red and white stripes. The words Disabled Veteran, ~~shall~~ must be inscribed on the plate in blue, in at least ten point bold type;

(3) The veteran plate ~~shall~~ must designate the owner as a veteran. The plate may allow for additional indication of the conflict, rank, or status of the veteran;

(4) The active duty plate ~~shall~~ must designate the owner as currently serving on active duty. The plate may allow for additional indication of the conflict, rank, or status of the active duty member;

(5) The Prisoner of War plate ~~shall~~ must contain a symbol indicating that the owner was a prisoner of war;

(6) The Pearl Harbor survivor plate ~~shall~~ must contain a symbol indicating that the owner survived the attack at Pearl Harbor, Hawaii while serving on active duty;

(7) The Gold Star plate ~~shall~~ must contain a symbol indicating that the owner is a parent, spouse, sibling, or child of a member of the United States armed forces who died while serving this country on active duty or as a result of that service;

(8) The Purple Heart plate ~~shall~~ must contain a symbol indicating that the owner received the Purple Heart as a result of the owner's service;

(9) The Medal of Honor plate ~~shall~~ must contain a symbol indicating that the owner received the Medal of Honor, including a facsimile of the medallion portion corresponding to the branch of the United States armed forces for which the owner served when the medal was received, as a result of the owner's service;

(10) The Silver Star plate ~~shall~~ must contain a symbol indicating that the owner received the Silver Star as a result of the owner's service;

(11) The Distinguished Service Cross plate ~~shall~~ must contain a symbol indicating that the owner received the Distinguished Service Cross as a result of the owner's service;

(12) The Navy Cross plate ~~shall~~ must contain a symbol indicating that the owner received the Navy Cross as a result of the owner's service;

(13) The Air Force Cross plate ~~shall~~ must contain a symbol indicating that the owner received the Air Force Cross as a result of the owner's service;

(14) The Distinguished Flying Cross plate ~~shall~~ must contain a symbol indicating that the owner received the Distinguished Flying Cross as a result of the owner's service;

(15) The Bronze Star with Valor plate ~~shall~~ must contain a symbol indicating that the owner received the Bronze Star with Valor as a result of the owner's service;

(16) The Bronze Star plate ~~shall~~ must contain a symbol indicating that the owner received the Bronze Star as a result of the owner's service;

(17) The tribal veteran plate ~~shall~~ must be of the same design as provided in § 32-5-123 and ~~shall~~ must designate the owner as a veteran; ~~and~~

(18) The woman veteran plate ~~shall~~ must designate the owner as a woman and a veteran. The plate may allow for additional indication of the conflict, rank, or status of the veteran; and

(19) The Legion of Merit plate must contain a symbol indicating that the owner received the Legion of Merit as a result of the owner's service.

Section 4. This Act is effective March 1, 2025.

Signed February 12, 2024

Chapter 112

(House Bill 1068)

An Act to allow disabled veterans to obtain a standard issue county motor vehicle or motorcycle license plate.

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

Section 1. That chapter 32-5 be amended with a NEW SECTION:

A disabled veteran may obtain standard issue county motor vehicle or motorcycle license plates in lieu of disabled veteran plates if the disabled veteran meets the requirements listed in §§ 32-5-156 and 32-5-157. A disabled veteran who obtains plates pursuant to this section shall pay fees according to § 32-5-160.

Signed February 5, 2024

Chapter 113

(House Bill 1119)

An Act to create a habitat conservation specialty plate and emblem.

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

Section 1. That chapter 32-5 be amended with a NEW SECTION:

Any owner of a motor vehicle who is a resident of this state and who has complied with all of the laws of this state in relation to the registration of a motor vehicle may receive habitat conservation specialty plates. The specialty plates must be issued only upon proof of payment of the current registration fees. Habitat conservation specialty plates may only be used on automobiles, pickup trucks, or vans licensed pursuant to § 32-5-6, motorcycles licensed pursuant to § 32-5-9, or pickup trucks licensed pursuant to § 32-5-6.3. Habitat conservation specialty plates must be displayed in accordance with § 32-5-98. Annual renewal of habitat conservation specialty plates must be in accordance with the provisions of this chapter.

Section 2. That chapter 32-5 be amended with a NEW SECTION:

An administrative fee of ten dollars must be charged for habitat conservation specialty plates. The fee must be deposited into the license plate special revenue fund.

Section 3. That chapter 32-5 be amended with a NEW SECTION:

The habitat conservation specialty plate must be designed by the Department of Game, Fish and Parks and approved by the secretary of the Department of Revenue. The specialty plates must be reflectorized and designed to have a habitat conservation emblem placed on the plate. The habitat conservation emblem must also be designed by the Department of Game, Fish and Parks and approved by the secretary of the Department of Revenue. Habitat conservation specialty plates must be reissued on a three-year cycle. Any change to the design of these specialty plates must be implemented during the next plate reissue cycle.

Section 4. That chapter 32-5 be amended with a NEW SECTION:

The Department of Game, Fish and Parks, and its agents, may sell the habitat conservation emblems and are responsible for the administration of the habitat conservation emblem. Fees for the habitat conservation emblems must be set by rules promulgated by the Game, Fish and Parks Commission pursuant to chapter 1-26. Any revenue collected from the sale of the habitat conservation emblems must be deposited into the game, fish and parks fund for the purposes of habitat development and enhancement on public and private lands.

Section 5. That chapter 32-5 be amended with a NEW SECTION:

No emblems other than a habitat conservation emblem may be used on the habitat conservation specialty plate. The habitat conservation emblem may not be affixed to any other emblem specialty plate. Misuse of the habitat conservation emblems or use of unauthorized emblems or stickers on the habitat conservation emblem specialty plate is a Class 2 misdemeanor.

Section 6. That chapter 32-5 be amended with a NEW SECTION:

Habitat conservation specialty plates must be transferred and replaced in the same manner as emblem specialty plates pursuant to §§ 32-5-171 to 32-5-173, inclusive.

Section 7. This Act is effective March 1, 2025.

Signed March 4, 2024

Chapter 114

(House Bill 1063)

An Act to amend the valuation service used to value vehicles.

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

Section 1. That § 32-5B-11 be AMENDED:

32-5B-11. If any motor vehicle has been subjected previously to a sales tax, use tax, motor vehicle excise tax, or similar tax by this or any other state or its political subdivision, no tax is owed to this state if the tax has been paid by the applicant to this or any other state or its political subdivision. Additionally, any part used in a rebuilt motor vehicle or motor vehicle manufactured by an applicant, previously subjected to sales tax, use tax, motor vehicle excise tax, or similar tax by this or any other state or its political subdivision, is not subject to the tax levied by this chapter, if the applicant applies for registration of the motor vehicle in this state within five years from the purchase date of the part. If the amount of tax levied and paid is the same or more than the amount of tax levied by this chapter, no tax or refund is due under this chapter. The county treasurer shall require of all applicants making application for registration of a motor vehicle in this state an affidavit of a licensed dealer, bill of sale, receipt, or other tangible evidence that the amount of tax has been paid by the current applicant. If sufficient proof is not furnished, the county treasurer ~~shall~~ must collect the tax levied by § 32-5B-1 on the retail value of the motor vehicle listed in ~~the National Automobile Dealers' Used Car Guide (NADA)~~ a national motor vehicle valuation service. The value ~~shall~~ must be the retail value of the motor vehicle on the day it entered the state. If a motor vehicle, after being taxed by this chapter or granted an exemption from part or all of the motor vehicle excise tax by this ~~provision~~ section, is sold or traded, the vehicle does not again qualify for an exemption by this ~~provision~~ section, if the vehicle is repurchased by the same applicant.

Signed February 5, 2024

Chapter 115

(House Bill 1131)

An Act to waive certain fees for nondriver identification cards for individuals who are homeless.

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

Section 1. That chapter 32-12 be amended with a NEW SECTION:

The Department of Public Safety shall waive the fee one-time for an original nondriver identification card or a duplicate nondriver identification card if the applicant is homeless.

In order for the fee to be waived, the applicant must submit, with the application, an affidavit from a homeless services provider attesting that the applicant is homeless. The affidavit must be signed by an employee of the homeless service provider.

For the purposes of this section, the term "homeless" means an individual who:

(1) Lacks a fixed, regular, and adequate nighttime residence;

(2) Has a primary nighttime residence that is a place not ordinarily used as a regular sleeping accommodation for human beings; or

(3) Is living in a homeless shelter.

For the purposes of this section, "homeless services provider" means any government or nonprofit agency that provides a homeless shelter, housing assistance program, or homeless outreach or advocacy program.

Section 2. That § 32-12-17.2 be AMENDED:

32-12-17.2. The Department of Public Safety may issue upon application a nondriver identification card, similar in form but distinguishable in color from a driver ~~licenses~~ license, to any resident of ~~South Dakota~~ this state. Each applicant for a nondriver identification card shall, as part of the application, present to the department a certified copy of a certificate of birth or another form of evidence of date of birth and identity as allowed by § 32-12-3.1. ~~The fee~~

Except as provided in section 1 of this Act, the fees for ~~an original or reissued~~ a nondriver identification card ~~is~~ are the same as prescribed for ~~an original~~ a driver license in § 32-12-16. Each nondriver identification card expires on the holder's birthday in the fifth year following the issuance of the nondriver identification card, or on the date of expiration of the applicant's authorized stay in the United States as determined by the systematic alien verification for entitlements system or alternate method approved by the United States Department of Homeland Security or, if there is no expiration date, for a period no longer than one year from date of issuance, whichever occurs first. Each nondriver identification card is renewable one hundred eighty days before its expiration upon application and payment of the required fee. Any nondriver identification card renewed before its expiration expires five years after the holder's ensuing birthday, or on the date of expiration of the applicant's authorized stay in the United States as determined by the systematic alien verification for entitlements system or alternate method approved by the United States Department of Homeland Security or, if there is no expiration date, for a period no longer than one year from date of issuance, whichever occurs first.

The nondriver identification card ~~shall~~ must bear an indication if the holder has a living will pursuant to chapter 34-12D or a durable power of attorney for health care pursuant to chapter 59-7 and an indication if the holder is a veteran pursuant to the provisions of § 32-12-17.15. Any nondriver identification card renewed during the thirty-day period following the date of expiration expires five years from the holder's previous birthday, or on the date of expiration of the applicant's authorized stay in the United States as determined by the systematic alien verification for entitlements system or alternate method approved by the United States Department of Homeland Security or, if there is no expiration date, for a period no longer than one year from date of issuance, whichever occurs first.

Signed March 18, 2024

Chapter 116

(Senate Bill 60)

An Act to update references to certain regulations regarding medical qualifications for certain commercial drivers.

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

Section 1. That § 32-12A-24 be AMENDED:

32-12A-24. No person under the age of eighteen may receive an endorsement on a commercial driver license to drive a school bus. Any school bus endorsed driver operating with an intrastate restriction shall meet all ~~requirements of~~ physical qualifications as required under 49 C.F.R. Part 391, Subpart E, as of January 1, ~~2015, in the area of physical qualifications~~ 2024.

Section 2. That § 32-12A-24.1 be REPEALED:

~~Any person with insulin-treated diabetes mellitus, who is otherwise medically qualified under the physical examination standards of the federal motor carrier safety regulations, as provided by § 32-12A-24, may request a waiver for this condition from the department. If an applicant for an intrastate school bus endorsement meets the requirements as specified in subdivisions (1) to (7), inclusive, of this section, the department shall grant a waiver. The department shall notify each applicant and each affected school district or private contractor of its determination of eligibility for each application for a waiver. An applicant shall:~~

~~(1) Provide evidence, signed by a physician, physician assistant, or certified nurse practitioner that the applicant has no other disqualifying conditions including diabetes-related complications;~~

~~(2) Provide evidence, signed by a physician, physician assistant, or certified nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes resulting in a loss of consciousness or any severe hypoglycemic episode within the past five years;~~

~~(3) Provide evidence, signed by a physician, physician assistant, or certified nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes requiring the assistance of another person within the past five years;~~

~~(4) Provide evidence, signed by a physician, physician assistant, or certified nurse practitioner that the applicant has had no recurrent severe hypoglycemic episodes resulting in impaired cognitive functioning that occurred without warning symptoms within the past five years;~~

~~(5) Document that the applicant has been examined by a board-certified or board-eligible physician, a physician assistant, or a certified nurse practitioner who has conducted a complete medical examination. The complete medical examination shall consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:~~

~~(a) The date insulin use began;~~

~~(b) Diabetes diagnosis and disease history;~~

~~(c) Hospitalization records, if any;~~

~~(d) Consultation notes for diagnostic examinations;~~

~~(e) Special studies pertaining to the diabetes;~~

~~(f) Follow-up reports;~~

~~(g) Reports of any severe hypoglycemic episode within the last five years;~~

~~(h) Two measures of glycosylated hemoglobin, the first ninety days before the last and current measure;~~

~~(i) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and any other medications or drugs taken; and~~

~~(j) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;~~

~~(6) Submit a signed statement from an endocrinologist indicating the following medical determinations:~~

~~(a) The endocrinologist is familiar with the applicant's medical history for the past five years, either through actual treatment over that time or through consultation with a physician who has treated the applicant through that time;~~

~~(b) The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures that must be followed to monitor and manage the applicant's diabetes and the procedures to be followed if complications arise; and~~

~~(c) The applicant has the ability and has demonstrated the willingness to properly monitor and manage the applicant's diabetes; and~~

~~(7) Submit a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and does not have diabetic retinopathy and meets the vision standards in 49 C.F.R. 391.41 (b)(10), as of January 1, 2015, or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, the applicant shall be examined by an ophthalmologist and submit a signed statement from the ophthalmologist that the applicant does not have unstable advancing disease of blood vessels in the retina, known as unstable proliferative diabetic retinopathy.~~

~~Each school bus driver that is granted a waiver for insulin-treated diabetes mellitus issued by the department shall maintain the waiver in the driver's possession at all times. Any school bus driver that is granted the waiver and has a severe hypoglycemic episode forfeits the waiver and may not reapply for five years.~~

~~The department shall promulgate rules, pursuant to chapter 1-26, necessary for the determination of eligibility and issuance of a waiver to persons with insulin-treated diabetes mellitus in accordance with the provisions of this section.~~

~~A waiver granted under this section may be issued for a maximum of two years. The driver may reapply for renewal of the waiver every two years.~~

Section 3. That § 32-12A-24.2 be REPEALED:

~~Any person who holds a waiver pursuant to § 32-12A-24.1 shall, after one~~

~~year of holding the waiver, undergo a physical examination and submit to the employer a signed statement from a physician, physician assistant, or certified nurse practitioner that the person has completed a physical examination.~~

Section 4. That § 32-12A-24.3 be REPEALED:

~~No person who holds a waiver pursuant to § 32-12A-24.1 may operate a school bus with students present unless the person checks his or her blood glucose level no more than thirty minutes before operating the bus. If the person operates a bus for a continuous duration that exceeds eighty-nine minutes, the person shall check his or her blood glucose level each hour and record the information. The person shall submit the information to the employer each day.~~

Signed February 5, 2024

Chapter 117
(Senate Bill 59)

An Act to provide for the downgrade of commercial driver licenses and commercial learners permits upon notice of certain drug and alcohol violations.

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

Section 1. That chapter 32-12A be amended with a NEW SECTION:

The department must, upon receiving notification pursuant to 49 C.F.R. § 383.73 (September 29, 2022), that a commercial learner's permit holder or a commercial driver license holder is prohibited from operating a commercial motor vehicle, downgrade the commercial learner's permit or commercial driver license to a non-commercial motor vehicle operator's license. The downgrade must be completed and recorded on the commercial driver license information system within sixty days of the department's receipt of the notification.

For purposes of this Act, the term "downgrade" means the department's removal of the commercial learner's permit or commercial driver license privilege from the driver's license, as set forth in 49 C.F.R. § 383.5 (June 1, 1987).

Section 2. That a NEW SECTION be added to chapter 32-12A:

No downgrade may occur if before the department completes and records the downgrade on the commercial driver license information system driver record, the department receives notification that pursuant to 49 C.F.R. § 382.503(a) (October 7, 2021), the commercial learner's permit holder or a commercial driver license holder is no longer prohibited from operating a commercial motor vehicle, the department must terminate the downgrade process without removing the commercial learner's permit or commercial driver license privilege from the driver's license.

Section 3. That a NEW SECTION be added to chapter 32-12A:

After the department completes and records the downgrade of the commercial driver license information system driver record, if the Federal Motor Carrier Safety Administration notifies the department that pursuant to 49 C.F.R. § 382.503(a) (October 7, 2021), a driver is no longer prohibited from operating a

commercial motor vehicle, the state must make the driver eligible for reinstatement of the commercial learner's permit or commercial driver license privilege to the driver's license.

Section 4. That a NEW SECTION be added to chapter 32-12A:

After the department completes and records the downgrade of the driver record on the commercial driver license information system, and if the Federal Motor Carrier Safety Administration notifies the department that the driver was erroneously identified as prohibited from operating a commercial motor vehicle, the department shall:

(1) Reinstate the commercial learner's permit or commercial driver license privilege to the driver's license as expeditiously as possible; and

(2) Expunge from the commercial driver license information system the driver record and, if applicable, the motor vehicle record, as defined in 49 C.F.R. § 390.5T (March 9, 2022), any reference related to the driver's erroneous prohibited status.

Signed February 5, 2024

Chapter 118
(House Bill 1225)

An Act to define a multi-passenger quadricycle and to provide for the regulation of multi-passenger quadricycles.

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

Section 1. That a NEW SECTION be added to title 32:

For the purposes of this chapter, the term "multi-passenger quadricycle" means a vehicle equipped with fully operative pedals for propulsion by means of human muscular power exclusively. The vehicle must be:

(1) Equipped with at least four wheels and is operated in a manner similar to a bicycle;

(2) Equipped with at least five seats for passengers;

(3) Designed to be operated by a driver, who may use an assist-motor capable of propelling the vehicle in conjunction with human muscular power;

(4) Operated for commercial purposes within a municipality;

(5) Equipped with a steering wheel that gives the driver exclusive control of the direction of the vehicle;

(6) Equipped with at least one tail lamp in accordance with § 32-17-12;

(7) Equipped with at least one stop lamp in accordance with § 32-17-8.1;

(8) Equipped with at least two headlamps with one on each side of the front of the vehicle; and

(9) Equipped with a rear vision mirror in accordance with § 32-15-8.

Section 2. That a NEW SECTION be added to title 32:

Unless otherwise allowed by a municipality, a multi-passenger quadricycle may not be operated on any bicycle path or multi-use path.

Section 3. That a NEW SECTION be added to title 32:

An owner of a multi-passenger quadricycle must maintain financial responsibility as required by subdivisions 32-35-113(1) and (4).

Section 4. That § 32-3-1 be AMENDED:

32-3-1. Terms used in chapters 32-3 to 32-5B, inclusive, mean:

(1) "Commercial motor vehicle," any motor vehicle used or maintained for the transportation of persons or property for hire, compensation, or profit, or designed, used, or maintained primarily for the transportation of property, and not specifically excluded under § 32-9-3;

(2) "Component part," any part of a motor vehicle, trailer, or semitrailer other than a tire, having a vehicle identification number;

(3) "Dealer," any person who, for commission or with intent to make a profit or gain, sells, exchanges, rents with option to purchase, offers, or attempts to negotiate a sale or exchange of new, or new and used vehicles, or who is engaged wholly or in part in the business of selling new, or new and used vehicles, whether or not ~~such~~ the vehicles are owned by that person;

(4) "Department," Department of Revenue;

(4A) "Electric bicycle," as that term is defined in § 32-20B-9;

(4B) "Gross vehicle weight rating," the value specified by the manufacturer as the loaded weight of a single vehicle;

(5) "Junking certificate," a certificate of ownership, which may not be restored to a title document ~~which~~ that allows highway use, issued by the department to the owner of a vehicle ~~which~~ that is going to be dismantled and sold for parts;

(5A) "Low-speed vehicle," a four-wheeled motor vehicle whose speed attainable in one mile is more than twenty miles per hour and not more than twenty-five miles per hour on a paved level surface~~.~~;

(6) "Manufactured home," a structure, transportable in one or more sections, which is eight body feet or more in width or forty body feet or more in length in the traveling mode, or is three hundred twenty or more square feet when erected on a site; which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities; and which contains the plumbing, heating, air conditioning, and electrical systems therein. The term includes any structure ~~which~~ that meets all the requirements of this subdivision and any other structure ~~which~~ that has been certified by the secretary of housing and urban development. The term does not include a recreational park trailer;

(7) "Manufacturer," any person, firm, corporation, limited liability company, or association engaged in the manufacture of new motor vehicles as a regular business;

(8) "Mobile home," a movable or portable unit, designed and constructed to be towed on its own chassis (comprised of frame and wheels), and

designed to be connected to utilities for year-round occupancy. The term includes:

(a) Units containing parts that may be folded, collapsed, or telescoped when being towed and that may be expanded to provide additional cubic capacity; and

(b) Units composed of two or more separately towable components designed to be joined into one integral unit capable of being separated again into the components for repeated towing.

The term does not include a recreational park trailer;

(9) "Moped," a motor driven cycle equipped with two or three wheels. If a combustion engine is used, the maximum piston or rotor displacement ~~shall~~ must be fifty cubic centimeters regardless of the number of chambers in ~~such~~ the power source. The power source ~~shall~~ must be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. The term does not include an electric bicycle;

(10) "Motorcycle," includes motorcycles, motorbikes, mopeds, bicycles with a motor attached, and all motor operated vehicles of the bicycle or tricycle type, whether the motive power be a part thereof or attached thereto, and having a saddle or seat with the driver sitting astride or upon it, or a platform on which the driver stands, but excluding a tractor. The term does not include an electric bicycle;

(11) "Motor vehicle," automobiles, motor trucks, motorcycles, house trailers, trailers, and all vehicles propelled by power other than muscular power, except traction engines, road rollers, farm wagons, freight trailers, vehicles that run only on rails or tracks, electric bicycles, multi-passenger quadricycle as defined in section 1 of this Act, and off-road vehicles as defined in § 32-20-1;

(12) "New motor vehicle," any motor vehicle to which a manufacturer's statement of origin has not been transferred, or is a motor vehicle on which title was issued from the manufacturer's statement of origin or manufacturer's certificate of origin and is still in the name of the first person who took title to the vehicle;

(13) "Noncommercial motor vehicle," any motor vehicle not classified as a commercial motor vehicle;

(14) "Noncommercial trailer or semitrailer," any trailer or semitrailer not used or maintained for the transportation of persons or property for hire, compensation, or profit;

(14A) "Notation," a physical or electronic process of recording a lien on a certificate of title, a manufacturer's statement of origin, or a manufacturer's certificate of origin;

(15) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed primarily to be operated on land other than a highway and includes all terrain vehicles, dune buggies, and any vehicle whose manufacturer's statement of origin (MSO) or manufacturer's certificate of origin (MCO) states that the vehicle is not for highway use. The term does not include a farm vehicle or an electric bicycle as defined in this section;

(16) "Owner," any person, firm, association, or corporation renting a motor vehicle or having the exclusive use thereof, under a lease or otherwise, for a period greater than thirty days; as between contract vendor and

contract vendee, the term, owner, shall refer to the contract vendee, unless the contrary clearly appears from the context of chapters 32-3 to 32-5B, inclusive, or a person having legal possession or title;

(17) "Rebuilt vehicle," any motor vehicle, trailer, or semitrailer that has been rebuilt by the addition or deletion of assemblies, subassemblies, parts, or component parts so that upon gross visual examination it does not appear to be the vehicle described in the certificate of title last issued for the vehicle, or whose title has been marked as rebuilt by this state or another state or jurisdiction;

(17A) "Recreational park trailer," a vehicle that is primarily designed to provide temporary living quarters for recreational, camping, or seasonal use and which:

(a) Is built on a single chassis mounted on wheels;

(b) Has a gross trailer area not exceeding four hundred square feet in the setup mode;

(c) Is certified by the manufacturer as complying with American National Standards Institute Standard No. A119.5 in effect on January 1, 2008; and

(d) Has at least a seventeen digit identification number and the manufacturer has designated the vehicle as a recreational park model on the manufacturer statement of origin;

(18) "Recreational vehicle," a vehicular portable structure built on a chassis designed to be used as a temporary dwelling for travel, recreational, vacation, or seasonal uses, permanently identified as a travel trailer or a recreational park trailer by the manufacturer of the trailer;

(19) "Road tractor," any motor vehicle designed and used for drawing other vehicles, except farm or logging tractors used exclusively for farming or logging, and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn;

(20) "Secretary," secretary of revenue;

(21) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle;

(22) "State," includes the territories and the federal districts of the United States;

(23) "Trailer," any vehicle without motive power designed for carrying property or passengers wholly on its own structure and for being drawn by a motor vehicle;

(24) "Truck tractor," any motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn;

(25) "Used vehicle," any motor vehicle to which title has been issued to someone other than the first person who took title to the motor vehicle from the manufacturer's statement of origin or manufacturer's certificate of origin; and

(26) "Vehicle identification number," the number assigned by the manufacturer or by the department for the purpose of identifying the vehicle. The term includes any number or letters assigned by the manufacturer for the

purpose of identifying a component part and any such number stamped on a vehicle or part according to law or the rules promulgated by the department for the purpose of identifying the vehicle or part.

Section 5. That chapter 32-3 be amended with a NEW SECTION:

A multi-passenger quadricycle, as defined in section 1 of this Act, is exempt from this chapter.

Section 6. That chapter 32-5 be amended with a NEW SECTION:

A multi-passenger quadricycle, as defined in section 1 of this Act, is exempt from this chapter.

Section 7. That § 32-6D-1 be AMENDED:

32-6D-1. Terms used in this chapter mean:

(1) "Consumer," the purchaser, other than for purposes of resale, of a new or previously untitled motor vehicle used in substantial part for personal, family, or household purposes, who is entitled by the terms of the warranty to enforce the obligations of the warranty;

(2) "Express warranty," a written warranty, so labeled, issued by the manufacturer of a new motor vehicle, including any terms or conditions precedent to the enforcement of obligations under that warranty;

(3) "Lemon law rights period," the period ending one year after the date of the original delivery of a motor vehicle to a consumer or the first twelve thousand miles of operation, whichever first occurs;

(4) "Manufacturer," the person, firm, corporation, or limited liability company engaged in the business of manufacturing, importing, or distributing motor vehicles to be made available to a motor vehicle dealer for retail sale;

(5) "Motor vehicle," any vehicle intended primarily for use and operation on the public ~~highways which~~ highway that is self-propelled. The term also includes any all-terrain vehicle with four or more wheels and with a combustion engine having a piston or rotor displacement of two hundred cubic centimeters or more. The term does not include any electric bicycle as defined in § 32-20B-9, a multi-passenger quadricycle as defined in section 1 of this Act, or any motor home or ~~to~~ any motor vehicle having a manufacturer's gross vehicle weight rating of fifteen thousand pounds or more;

(6) "Motor vehicle dealer" or "authorized dealer," any person operating under a dealer agreement from a manufacturer and licensed pursuant to chapter 32-6B;

(7) "Nonconforming condition," any condition of a motor vehicle that is not in conformity with the terms of any express warranty issued by the manufacturer to a consumer and that significantly impairs the use, value, or safety of the motor vehicle and occurs or arises solely in the course of the ordinary use of the motor vehicle, and that does not arise or occur as a result of abuse, neglect, modification, or alteration of the motor vehicle not authorized by the manufacturer, nor from any accident or other damage to the motor vehicle which occurs or arises after the motor vehicle was delivered by an authorized dealer to the consumer; and

(8) "Notice of a nonconforming condition," a written statement delivered to the manufacturer and that describes the motor vehicle, the nonconforming condition, and all previous attempts to correct the nonconforming condition by identifying the person who made the attempt and the time the attempt was made.

Section 8. That § 32-9-1 be AMENDED:

32-9-1. Terms used in this chapter mean:

(1) "Compensation," the charge imposed upon motor carriers in consideration of the unusual use of the public highways in this state by such motor carriers;

(2) "Compensation certificate," the certificate issued upon application by a motor carrier, as defined in §§ 32-9-2 and 32-9-3, showing authority to use and payment of compensation for the unusual use of the highways by the one to whom issued;

(3) "Commercial motor vehicle," any motor vehicle used or maintained for the transportation of persons or property for hire, compensation or profit or designed, used or maintained primarily for the transportation of property, and not specifically excluded under § 32-9-3;

(4) "Department," Department of Revenue;

(5) "For hire," for remuneration of any kind, paid or promised, either directly or indirectly, for the transportation of persons or property. An occasional accommodative transportation service by a person not in the transportation business while on an errand for himself, is not a service for hire, even though the person transported shares in the cost or pays for the service;

(6) "Gross weight," the total weight of the chassis, body, equipment, and maximum load of each motor vehicle, trailer, or semitrailer as fixed by the applicant for a compensation certificate;

(7) "Motor vehicle," all vehicles or machines propelled by any power other than muscular used upon the public highways for the transportation of persons or property or both. The term does not include an electric bicycle as defined in § 32-20B-9 or a multi-passenger quadricycle as defined in section 1 of this Act;

(8) "Private business use," the transportation of persons or property for hire, compensation, profit, or remuneration of any kind, or the transportation of any property of a business venture not specifically excluded under § 32-9-3;

(9) "Public highway," every street, alley, public road, public thoroughfare, or highway in this state;

(10) "Secretary," secretary of revenue;

(11) "Semitrailer," any vehicle of the trailer type, equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle; and

(12) "Trailer," every vehicle without motive power designed to carry property or persons wholly on its own structure and to be drawn by a motor vehicle.

Section 9. That § 32-14-1 be AMENDED:

32-14-1. Terms used in chapters 32-14 to 32-19, inclusive, 32-12 and 32-22 to 32-34, inclusive, mean:

(1) "Alcoholic beverage," as that term is defined by subdivision 35-1-1(1);

(2) "Authorized emergency vehicle," a vehicle of a fire department, a police vehicle, an ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or the Department of Health, and an emergency vehicle titled to a local organization for emergency management created pursuant to chapter 34-48A;

(3) "Automobile transporter," a vehicle combination designed or modified to be used specifically for the transport of assembled highway vehicles;

(4) "Boat transporter," a vehicle combination designed or modified to be used specifically for the transport of assembled or partially disassembled boats and boat hulls;

(5) "Business district," the territory contiguous to a highway when fifty percent or more of the frontage thereon for a distance of three hundred feet or more is occupied by buildings in use for business;

(6) "Commission," the Public Utilities Commission;

(7) "Controlled drug or substance," as that term is defined in § 34-20B-3;

(8) "Crosswalk," that part of a roadway at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the highway measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway; or any portion of a roadway at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface;

(9) "Department," the Department of Public Safety of this state acting directly or through its duly authorized officers and agents;

(9A) "Electric bicycle," as that term is defined in § 32-20B-9;

(10) "Farm tractor," a motor vehicle designed and used primarily as a farm implement for drawing plows, mowing machines, and other implements of husbandry;

(11) "Highway," the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public as a matter of right for purposes of vehicular travel;

(12) "Intersection," the area embraced within the prolongation of the lateral curb lines or, if none, then of the lateral boundary lines of two or more highways ~~which~~ that join one another at an angle, whether or not one such highway crosses the other. However, ~~such~~ the area, in the case of the point where an alley and a street meet within a municipality, is not an intersection;

(13) "Law enforcement officer," as that term is defined in § 23-3-27;

(14) "Local authorities," a county, municipal, township, road district, and other local board or body having authority to adopt local police regulations under the Constitution and laws of this state;

(15) "Metal tires," a tire that the surface ~~of which~~ in contact with the highway is wholly or partly of metal or other hard, nonresilient material;

(16) "Motorcycle," a motor vehicle designed to travel on not more than three wheels in contact with the ground, except any vehicle as may be included within the term, tractor;

(17) "Motor vehicle," a vehicle that is self-propelled. The term does not include an electric bicycle or multi-passenger quadricycle as defined in section 1 of this Act;

(18) "Official traffic control device," a sign, signal, marking, and device not inconsistent with the law placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. The term also includes a flagman or a sign, signal, marking, or other device temporarily placed or erected by a person working upon, along, above, or under a highway installing or maintaining a public service facility and which is necessary or required to warn, direct, or otherwise control traffic during the time of work or when a hazard exists;

(19) "Owner," a person who holds the legal title of a vehicle or in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or in the event a mortgagor of a vehicle is entitled to possession, then the conditional vendee or lessee or mortgagor is the owner for the purpose of said chapters;

(20) "Park or parking," the standing of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in loading or unloading merchandise or passengers;

(21) "Pneumatic tire," a tire inflated with compressed air;

(22) "Private road or driveway," a road or driveway not open to the use of the public for purposes of vehicular travel;

(23) "Recreation vehicle," a self-propelled or towed vehicle equipped to serve as temporary living quarters for recreational, camping, or travel purposes and used solely as a family or personal conveyance and in no way used for a commercial purpose;

(24) "Residence district," the territory contiguous to a highway not comprising a business district when the frontage on the highway for a distance of three hundred feet or more is mainly occupied by dwellings or by dwellings and buildings in use for business;

(25) "Right-of-way," the right of one vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed, and proximity as to give rise to danger of collision unless one grants precedence to the other;

(26) "Road tractor," a motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon either independently or any part of the weight of a vehicle or load so drawn;

(27) "Roadway," that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. If a highway includes two or more separate roadways, the term, roadway, refers to any such roadway separately but not to all such roadways collectively;

(28) "Safety zone," the area or space officially set aside within a highway for the exclusive use of pedestrians and which is so plainly marked or indicated by proper signs as to be plainly visible at all times while set apart as a safety zone;

(29) "Semitrailer," any vehicle of the trailer type equipped with a kingpin assembly, designed and used in conjunction with a fifth wheel connecting device on a motor vehicle and constructed so that some part of its weight and that of its load rests upon or is carried by another vehicle;

(30) "Sidewalk," that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines intended for use of pedestrians;

(31) "Single axle" or "one axle," one or more consecutive axles whose centers may be included between two transverse vertical planes spaced forty inches or less apart, extending across the full width of the vehicle;

(32) "Solid rubber tire," a tire made of rubber other than a pneumatic tire;

(33) "Steering axle," any axle on the front of a motor vehicle that is activated by the operator to directly accomplish guidance or steerage of the motor vehicle or combination of vehicles;

(34) "Stinger-steered transporter combination," a truck tractor semitrailer combination with a fifth wheel located on a drop frame which is located behind and below the rearmost axle of the power unit;

(35) "Tandem axle," two or more consecutive axles whose centers may be included between parallel transverse vertical planes spaced more than forty inches and not more than ninety-six inches apart, extending across the full width of the vehicle;

(36) "Trailer," a vehicle without motive power designed for carrying property or passengers on its own structure and for being drawn by a motor vehicle;

(37) "Truck tractor," a motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn;

(38) "Urban district," the territory contiguous to and including any street ~~which~~ that is built up with structures devoted to business, industry, or dwelling houses situated at intervals of less than one hundred feet for a distance of a quarter of a mile or more;

(39) "Vehicle," a device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks; including bicycles, electric bicycles, multi-passenger quadricycles, and ridden animals; and

(40) "Wireless communication device," any wireless electronic communication device that provides for voice or data communication between two or more parties, including a mobile or cellular telephone, a text messaging device, a personal digital assistant that sends or receives messages, an audio-video player that sends or receives messages, or a laptop computer. A wireless communication device does not include a global positioning or navigation system (GPS) used to receive driving directions.

Section 10. That § 32-20-1 be AMENDED:

32-20-1. Terms used in this chapter mean:

(1) "Department," the Department of Public Safety ~~.~~;

(2) "Moped," a motor driven cycle equipped with two or three wheels. If a combustion engine is used, the maximum piston or rotor displacement ~~shall~~ must be fifty cubic centimeters regardless of the number of chambers

in ~~such~~ the power source. The power source ~~shall~~ must be equipped with a power drive system that functions directly or automatically only, not requiring clutching or shifting by the operator after the drive system is engaged. The term does not include an electric bicycle as defined in § 32-20B-9~~.~~ or a multi-passenger quadricycle as defined in section 1 of this Act;

(3) "Motorcycle," includes motorcycles, motorbikes, mopeds, bicycles with motor attached, and all motor operated vehicles of the bicycle or tricycle type, whether the motive power be a part thereof or attached thereto, and having a saddle or seat with the driver sitting astride or upon it, or a platform on which the driver stands, but excluding a tractor. The term does not include an electric bicycle as defined in § 32-20B-9~~.~~ or a multi-passenger quadricycle; and

(4) "Off-road vehicle," any self-propelled, two or more wheeled vehicle designed primarily to be operated on land other than a highway and includes all terrain vehicles, dune buggies, and any vehicle whose manufacturer's statement of origin or manufacturer's certificate of origin states that the vehicle is not for highway use. The term does not include a farm vehicle as defined in § 32-3-2.4, a multi-passenger quadricycle, or an electric bicycle as defined in § 32-20B-9.

Section 11. That § 32-38-2 be AMENDED:

32-38-2. For the purposes of this chapter, a passenger vehicle is any self-propelled vehicle intended primarily for use and operation on ~~the~~ a public ~~highways~~ highway including any passenger car, station wagon, van, taxicab, emergency vehicle, motor home, truck, or pickup. The term does not include any motorcycle, motor scooter, motor bicycle, electric bicycle, multi-passenger quadricycle as defined in section 1 of this Act, passenger bus, or school bus. The term also does not include any farm tractor or implement of husbandry designed primarily or exclusively for use in agricultural operations.

Section 12. That a NEW SECTION be added to chapter 32-23:

A driver of a multi-passenger quadricycle, as defined in section 1 of this Act, is subject to a violation of any of the provisions of this chapter, but a passenger of a multi-passenger quadricycle may not be charged with a violation of this chapter.

Signed March 18, 2024

Chapter 119

(Senate Bill 14)

An Act to expand authorization for the conditional taking of coyotes from snowmobiles.

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

Section 1. That § 32-20A-12 be AMENDED:

32-20A-12. ~~No person may~~An individual may not chase, drive, harass, kill, or attempt to kill any game animal or game bird, with or from a snowmobile~~, except that coyotes may be taken by a landowner or lessee on the landowner's~~

~~property by shooting from stationary snowmobiles through the use of firearms if the operator of the snowmobile is at least eighteen years of age. Not more than one person may be aboard the snowmobile while coyotes are being hunted or taken pursuant to this section.~~

Notwithstanding the prohibition of this section, an individual may use a snowmobile in the taking of a coyote if:

(1) The individual is on property that the individual owns or leases or the individual is on the property as an invitee of the owner or lessee;

(2) The individual is at least eighteen years of age;

(3) The individual is not engaged in harassing the coyote;

(4) The individual is using a firearm to take the coyote;

(5) The snowmobile is stationary at the time the individual shoots or attempts to shoot the coyote; and

(6) No other individual is aboard the snowmobile.

A violation of this section is a Class 2 misdemeanor.

Signed February 20, 2024

Chapter 120

(House Bill 1083)

An Act to permit a person convicted of certain driving under the influence offenses to drive for certain purposes.

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

Section 1. That § 32-23-2 be AMENDED:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, the person is guilty of a Class 1 misdemeanor, and the court ~~shall~~ must revoke the person's driver license for not less than thirty days. ~~However, the~~ The court may, in its discretion, issue an order, upon proof of financial responsibility pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare. The court may also order the revocation of the person's driving privilege for a further period not to exceed one year or restrict the privilege in ~~such~~ any manner ~~as~~ it sees fit for a period not to exceed one year.

Section 2. That § 32-23-3 be AMENDED:

32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, the person is guilty of a Class 1 misdemeanor, and the court ~~shall, in pronouncing sentence,~~ must revoke the person's driver license for a period of not less than one year. ~~However, upon~~ Upon the successful completion of a court-approved chemical dependency program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to drive for the purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health

appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare. If the person is convicted of driving without a license during that period, the court must sentence the person ~~shall be sentenced~~ to the county jail for not less than three days, which sentence may not be suspended.

Section 3. That § 32-23-4 be AMENDED:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court~~, in pronouncing sentence, shall~~ must revoke the person's driver license for a period of not less than one year from the date sentence is imposed or one year from the date of initial release from imprisonment, whichever is later. ~~In the event~~ If the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the court must sentence the person ~~shall be sentenced~~ to the county jail for not less than ten days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of ~~such~~ the revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare.

Section 4. That § 32-23-4.6 be AMENDED:

32-23-4.6. If a conviction for a violation of § 32-23-1 is for a fourth offense, the person is guilty of a Class 5 felony, and the court~~, in pronouncing sentence,~~ must revoke the person's driver license for a period of not less than two years from the date sentence is imposed or two years from the date of initial release from imprisonment, whichever is later. If the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the court must sentence the person to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of ~~such~~ the revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare. ~~Further, sentencing~~ Sentencing pursuant to this section includes the provisions of § 23A-27-18.

~~If a person is convicted of a fourth violation of § 32-23-1, the~~ The court must sentence the person to at least two years in a state correctional facility, one year of which must be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool.

The court may suspend this sentence only if the court orders the person to participate in and complete a drug court program, DUI court program, veterans treatment court program, or mental health court program, as a condition of probation.

Section 5. That § 32-23-4.7 be AMENDED:

32-23-4.7. If a conviction for violation of § 32-23-1 is for a fifth or subsequent offense~~, or subsequent offenses thereafter~~, the person is guilty of a Class 4 felony and the court~~, in pronouncing sentencing,~~ must revoke the person's driver license for a period of not less than three years from the date sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. ~~In the event~~ If the person is returned to imprisonment prior to the completion of the period of driver's license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the court must sentence the person to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of ~~such~~ the revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare.

~~If a person is convicted of a fifth or subsequent violation of § 32-23-1, the~~ The court must sentence the person to at least four years in a state correctional facility, one year of which must be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. The court may suspend this sentence only if the court orders the person to participate in and complete a drug court program, DUI court program, veterans treatment court program, or mental health court program, as a condition of probation.

Section 6. That § 32-23-4.9 be AMENDED:

32-23-4.9. If a conviction for a violation of § 32-23-1 is for a sixth or subsequent offense, ~~or subsequent offense,~~ and the person had at least five convictions of § 32-23-1 occurring within twenty-five years of the violation being charged~~,~~ and at least two of those prior convictions ~~having~~ occurred within ten years, the violation is an aggravated offense and the person is guilty of a Class 4 felony. If a person is convicted of an aggravated violation of § 32-23-1 and the person has at least six convictions of § 32-23-1 occurring within fifteen years of the violation being charged, the court must sentence the person to at least six years in a state correctional facility, one year of which must be served on parole, unless refused pursuant to § 24-15A-15. Any term of parole must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. The court may suspend this sentence only if the court orders the person to participate in and complete a drug court program, DUI court program, veterans treatment court program, or mental health court program, as a condition of probation.

The court~~, in pronouncing sentencing, shall~~ must revoke the person's driver license for a period of not less than three years from the date the sentence

is imposed or three years from the date of initial release from imprisonment, whichever is later. If the person is returned to imprisonment prior to the completion of the period of driver license revocation, time spent imprisoned does not count toward fulfilling the period of revocation. If the person is convicted of driving without a license during that period, the court must sentence the person to the county jail for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of ~~such~~ the revocation.

Upon the person's successful completion of a court-approved chemical dependency counseling program and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery or pickup, health appointments, attendance at court or probation appointments, or attendance at counseling programs, treatment, or aftercare.

For ~~each~~ any person convicted under this section and placed on probation, parole, or released from prison due to a suspended sentence, the person's supervision must include at least one of the following: enrollment in an alcohol or drug accountability program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet, or another enhanced monitoring tool. The Unified Judicial System shall ~~oversee supervision of~~ supervise the offender if the sentence does not include a term of imprisonment in a state correctional facility. The Department of Corrections shall ~~oversee supervision of~~ supervise the offender if the sentence includes a term of imprisonment in a state correctional facility. Any offender supervised pursuant to this section is not excluded from earned discharge credit as otherwise authorized by statute.

If, during the period of supervision imposed under this section, the person being supervised violates conditions, the person must be penalized according to the graduated sanctions policy ~~to be~~ as established by the Supreme Court or the Department of Corrections, respectively.

Signed February 28, 2024

Chapter 121

(House Bill 1047)

An Act to enhance the penalties for eluding law enforcement.

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

Section 1. That § 32-33-18.1 be AMENDED:

32-33-18.1. Any driver of a vehicle who, after failing or refusing to bring a vehicle to a stop pursuant to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit of the law enforcement officer is guilty of third degree eluding. ~~Eluding~~ Third degree eluding is a Class 1 misdemeanor. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs.

Section 2. That § 32-33-18.2 be AMENDED:

32-33-18.2. Any driver of a vehicle who, after failing or refusing to bring

a vehicle to a stop pursuant to § 32-33-18, flees from a law enforcement officer or attempts to elude the pursuit of a law enforcement officer is guilty of ~~aggravated~~ second degree eluding if, at any time during the flight or pursuit, the driver operates the vehicle in a manner that constitutes an inherent risk of death or serious bodily injury to any third person.

~~Aggravated~~Second degree eluding is a Class 6 felony. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs. For any subsequent ~~aggravated~~ second degree eluding violation, the court ~~shall~~ must order that the defendant's driver's license be revoked for five years.

Section 3. That chapter 32-33 be amended with a NEW SECTION:

Any driver of a vehicle who, after failing or refusing to bring a vehicle to a stop pursuant to § 32-33-18, flees from a law enforcement officer or attempts to elude the pursuit of a law enforcement officer and does so in a manner that constitutes an inherent risk of death or serious bodily injury to any third person and causes serious bodily injury to another person is guilty of first degree eluding.

First degree eluding is a Class 4 felony. In addition, the court shall order that the defendant’s driver’s license be revoked for a period of not less than three years from the date the sentence is imposed or three years from the date of initial release from imprisonment, whichever is later. In the event the defendant is returned to imprisonment prior to the completion of the period of driver’s license revocation, time spent imprisoned does not count toward fulfilling the period of revocation.

Signed February 12, 2024

Chapter 122

(House Bill 1095)

An Act to establish provisions for the operation of automated motor vehicles.

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

Section 1. That a NEW SECTION be added to title 32:

The terms used in this chapter mean:

(1) "Automated driving system," the hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis;

(2) "Dynamic driving task," all of the real-time operational and tactical functions required to operate a vehicle in on-road traffic within an automated driving system's operational design domain, excluding strategic functions such as trip scheduling and selection of destinations and waypoints, including without limitation:

(a) Lateral vehicle motion control via steering;

(b) Longitudinal motion control via acceleration and deceleration;

(c) Monitoring the driving environment via object and event detection, recognition, classification, and response preparation;

(d) Object and event response execution;

(e) Maneuver planning; and

(f) Enhancing conspicuity via lighting, signaling, and gesturing;

(3) "Dynamic driving task fallback," the response by the person or human driver to either perform the dynamic driving task or achieve a minimal risk condition after the occurrence of a dynamic driving task performance-relevant system failure or upon operational design domain exit, or the response by an automated driving system to achieve minimal risk condition, under the same circumstances;

(4) "Fully autonomous vehicle," a motor vehicle equipped with an automated driving system designed to function without a human driver as a level 4 or 5 system under SAE J3016B;

(5) "Human driver," a natural person with a valid license to operate a motor vehicle who controls all or part of the dynamic driving task;

(6) "Minimal risk condition," a reasonably safe condition to which a person, human driver, or an automated driving system may bring a vehicle after performing the dynamic driving task fallback to reduce the risk of a crash when a given trip cannot or should not be completed;

(7) "Motor vehicle," all vehicles or machines, trailers, semitrailers, recreational vehicles, truck tractors, and road tractors propelled by any power other than muscular and used upon the public highways for the transportation of persons or property, or both;

(8) "On-demand autonomous vehicle network," a transportation service network that uses a software application or other digital means to dispatch or otherwise enable the pre-arrangement of transportation with fully autonomous vehicles for purposes of transporting passengers or goods;

(9) "Operational design domain," the operating conditions under which a given automated driving system is designed to function, including environmental, geographical, and time-of-day restrictions, or the presence or absence of certain traffic or roadway characteristics;

(10) "Request to intervene," notification by an automated driving system to a human driver that the human driver should promptly begin or resume part or all of the dynamic driving task; and

(11) "SAE J3016B," the Taxonomy and Definitions for Terms Related to Driving Automation Systems for On-Road Motor Vehicles published by SAE International in April 2021.

Section 2. That a NEW SECTION be added to title 32:

A fully autonomous vehicle may operate on public roads of this state without a human driver, provided that the automated driving system is engaged, and the vehicle:

(1) Achieves a minimal risk condition if the vehicle exits the operational design domain of its automated driving system;

(2) Achieves a minimal risk condition if a failure renders the vehicle's automated driving system unable to perform the entire dynamic driving

task relevant to its operational design domain;

(3) Is capable of operating in compliance with the applicable traffic and motor vehicle safety laws and regulations of this state; and

(4) When required by federal law, bears the required manufacturer's certification label indicating that at the time of the vehicle's manufacture, it complied with all applicable federal motor vehicle safety standards and any exemption granted by the National Highway Traffic Safety Administration.

Section 3. That a NEW SECTION be added to title 32:

When an automated driving system installed on a motor vehicle is engaged:

(1) The automated driving system is the driver and operator, for the purpose of assessing compliance with applicable traffic or motor vehicle laws, and shall satisfy electronically all physical acts required by a driver or operator of the vehicle;

(2) The automated driving system is licensed to operate the vehicle; and

(3) The vehicle's failure to comply with applicable traffic and motor carrier laws must be imputed to the owner of the vehicle, who may be charged and convicted of a violation.

Section 4. That a NEW SECTION be added to title 32:

A fully autonomous vehicle operating on public roads must be covered by proof of financial responsibility that satisfies the requirements of chapter 32-35.

Section 5. That a NEW SECTION be added to title 32:

In the event of an accident involving a fully autonomous vehicle:

(1) The fully autonomous vehicle must remain on the scene of the crash as required by chapter 32-34;

(2) The owner of the fully autonomous vehicle, or a person on behalf of the vehicle owner, shall report any crashes or collisions consistent with chapter 32-34; and

(3) The vehicle's failure to remain at the scene of the accident or to otherwise operate in compliance with the requirements of chapter 32-34 must be imputed to the owner of the vehicle, who may be charged and convicted of a violation of chapter 32-34.

Section 6. That a NEW SECTION be added to title 32:

An on-demand autonomous vehicle network is permitted to operate pursuant to chapter 32-40, with the exception that any provision of chapters 32-12 or 32-12A that reasonably applies only to a human driver would not apply to the operation of a fully autonomous vehicle with the automated driving system engaged on an on-demand autonomous vehicle network.

Section 7. That a NEW SECTION be added to title 32:

A fully autonomous vehicle must be titled in accordance with chapter 32-3. The vehicle's autonomy level as defined under SAE J3016B must be submitted to the Department of Revenue and the applicant shall submit documentation that attests to its autonomy level.

A fully autonomous vehicle must be registered in accordance with chapter 32-5. The vehicle's autonomy level as defined under SAE J3016B must be submitted to the Department of Revenue and the applicant shall submit documentation that attests to its autonomy level.

Section 8. That a NEW SECTION be added to title 32:

A person may operate a motor vehicle equipped with an automated driving system capable of performing the dynamic driving task if:

(1) Whenever the automated driving system is not capable of performing the entire dynamic driving task, the automated driving system will achieve a minimal risk condition or issue a request to intervene to the person;

(2) The person will respond to the request to intervene from the automated driving system; and

(3) The automated driving system is capable of being operated in compliance with all applicable traffic and motor vehicle safety laws and regulations of this state.

Nothing in this chapter prohibits a human driver from operating a fully autonomous vehicle equipped with controls that allow the human driver to control all or part of the dynamic driving task.

Section 9. That a NEW SECTION be added to title 32:

A fully autonomous vehicle that is also a commercial motor vehicle as defined in § 32-9-1 may operate pursuant to state laws governing the operation of commercial motor vehicles, except that any provision that reasonably applies only to a human driver does not apply to a vehicle operating with the automated driving system engaged.

Section 10. That a NEW SECTION be added to title 32:

A fully autonomous vehicle that is designed to be operated exclusively by the automated driving system for all trips is not subject to motor vehicle equipment laws or regulations of this state that:

(1) Relate to motor vehicle operation by a human driver seated in the vehicle; and

(2) Are not relevant to an automated driving system.

Section 11. That a NEW SECTION be added to title 32:

Except as provided in section 12, no state agency, or political subdivision may prohibit the operation of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks, or otherwise enact or keep in force rules or ordinances that would impose taxes, fees, or other requirements specific to the operation of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks, in addition to the requirements of this chapter.

Section 12. That a NEW SECTION be added to title 32:

The Transportation Commission shall promulgate rules pursuant to chapter 1-26 to implement the provisions of this chapter.

Section 13. That a NEW SECTION be added to title 32:

Nothing in section 11 of this Act may be interpreted or construed to prohibit a political subdivision of the state from exercising the powers and authorities provided by law to govern the public streets and roadways within their respective jurisdictions, provided it does not impose additional requirements in conflict with this Act or otherwise differentiate the treatment of fully autonomous vehicles, automated driving systems, or on-demand autonomous vehicle networks from non-autonomous vehicles.

Signed February 12, 2024

MILITARY AFFAIRS

Chapter 123
(Senate Bill 29)

An Act to allow eligible members of the South Dakota National Guard attending an in-state private, nonprofit post-secondary institution to receive the state tuition benefit.

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

Section 1. That a NEW SECTION be added to chapter 33-6:

Any private, nonprofit postsecondary institution located in this state, recognized as an exempt organization under 26 U.S.C. § 501(c)(3) as of January 1, 2024, and authorized to provide educational programs pursuant to chapter 13-48, may participate in the state's tuition benefit program for members of the South Dakota National Guard. To participate in the program, the institution must agree to accept the amount of the state tuition benefit for an undergraduate degree program under § 33-6-5 or for a graduate degree program under § 33-6-5.1 and the amount of any federal tuition benefit as full and complete payment of tuition for any student who meets the institution's admission requirements and the eligibility requirements of § 33-6-7. The participating institution shall collect the tuition benefit on behalf of an eligible student by submitting a request for payment to the Department of the Military on a form prescribed by the department. The department shall send the tuition benefit to the institution within sixty days of receiving the request for payment.

Each participating institution shall submit an estimate of the total number of students who will be enrolled in an undergraduate or graduate program, pursuant to this section, at the institution and eligible for the state tuition benefit to the department annually by July first.

Section 2. That a NEW SECTION be added to chapter 33-6:

An individual who meets the eligibility requirements of § 33-6-7 and is enrolled as a student in an undergraduate or graduate program at any institution participating in the tuition benefit program under section 1 of this Act is entitled to the maximum tuition benefit payable by the state under § 33-6-5 or 33-6-5.1,

respectively. The Department of the Military shall publish the maximum tuition benefit to be awarded for the next academic year by July first.

If a student is eligible for the state tuition benefit and a federal tuition benefit, the federal benefit must be applied to the amount due before the state benefit is applied. The total amount of the federal and state benefit may not exceed one hundred percent of the institution's standard tuition for the applicable undergraduate or graduate program.

Section 3. That § 33-6-7 be AMENDED:

33-6-7. To be eligible for ~~one hundred percent of in-state resident tuition without cost or reimbursement~~ a tuition benefit under § 33-6-5, 33-6-5.1, 33-6-6, or section 2 of this Act, ~~a national guard member shall~~ an individual must:

(1) Be a member of the South Dakota Army National Guard Unit or Air National Guard Unit throughout each semester or vocational program for which the member applies for benefits;

(2) Have satisfactorily completed required initial basic training;

(3) Have satisfactorily performed duty upon return from basic training, including a minimum ninety percent attendance on scheduled drill dates and at annual training with the member's parent unit;

(4) Maintain satisfactory academic progress; and

(5) Provide proper notice to the institution at the time of registration for the term in which the benefits are sought.

Section 4. That § 33-6-8 be AMENDED:

33-6-8. Any ~~person~~ individual desiring to use the benefits of ~~either~~ § 33-6-5 ~~or~~, 33-6-5.1, 33-6-6 ~~shall~~, or section 2 of this Act must apply to the Department of the Military. The adjutant general shall determine if ~~that person~~ the individual is entitled to the benefits of §§ 33-6-5 to 33-6-8, inclusive. The adjutant general ~~may~~ shall promulgate rules, pursuant to chapter 1-26 ~~to accomplish the purposes of §§ 33-6-5 to 33-6-8, inclusive, and to establish~~, establishing the application process, the procedures ~~for determining~~ by which awards are determined, the records ~~to be~~ that must be maintained, and the procedure for an appeal.

Signed March 13, 2024

VETERANS AFFAIRS

Chapter 124

(House Bill 1007)

An Act to amend the requirement to employ a county veterans' service officer.

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

Section 1. That § 33A-1-22 be AMENDED:

33A-1-22. The board of county commissioners of each county in this state shall employ ~~or~~ a county veterans' service officer, join with another county or counties in employing a county veterans' service officer ~~who, before such employment takes effect, is approved by the state secretary of veterans affairs. The county veteran's service officer's first appointment ends on the first Monday in January of the second year subsequent to the year of the appointment. The county veteran's service officer may be reappointed for terms of four years for each term. The appointment is subject to removal by the board or boards of county commissioners upon the recommendation of the state secretary of veterans' affairs or for cause~~, or contract with the Department of Veterans Affairs, to provide services as required by § 33A-1-24. Employment as a county veterans' service officer is contingent upon approval by the secretary of veterans affairs.

Section 2. That § 33A-1-29 be AMENDED:

33A-1-29. An Indian ~~tribes~~ tribe, as defined in subdivision 2-14-2(14), may appoint a veterans' service ~~officers~~ officer who shall serve under the same terms and conditions as a county veterans' service ~~officers~~ officer, as provided for in §§ 33A-1-22 to 33A-1-28, inclusive, or may contract with the Department of Veterans Affairs to provide the services of a veterans' service officer pursuant to § 33A-1-24. Such officers shall be known as tribal veterans' service officers.

Signed February 27, 2024

Chapter 125
(House Bill 1008)

An Act to modify the eligibility for admission to the state veterans' home and repeal the residency requirement.

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

Section 1. That § 33A-4-25 be AMENDED:

33A-4-25. ~~Any~~A veteran, as defined by § 33A-2-1~~, who has an honorable discharge, who has maintained a residence in the state at any time in the five years preceding the date of the application, and who has no income in excess of one thousand dollars per year above the maximum income limitation for pension benefits as determined by the United States Department of Veterans Affairs, is eligible for admission to the State Veterans' Home. For the purposes of this section, a residence is a physical structure in which a person resides and the term does not include a post office box or address of another mail service purchased by the veteran. A veteran who meets the residence requirements and has a rating of total disability as defined by the United States Department of Veterans Affairs for pension and compensation purposes is also eligible for admission. Membership~~, is eligible for admission to the State Veterans Home if the veteran is eligible for the payment of per diem for domiciliary care or nursing home care in a state home.

A veteran domiciled in this state within the past five years shall receive admission preference, contingent upon the veteran meeting all admission criteria. A veteran who is a member of a federally recognized Indian tribe located wholly or partially within the state shall receive admission preference, contingent upon the veteran meeting all admission criteria.

Residency status at the State ~~Veterans'~~ Veterans Home is not affected because of a medical leave of absence either in a United States Department of Veterans Affairs facility or other hospital. ~~Any veteran who is an enrolled member of a federally recognized Indian tribe located wholly or partially in the state meets the residency requirement.~~

Signed February 27, 2024

PUBLIC HEALTH AND SAFETY

Chapter 126

(Senate Bill 63)

An Act to revise provisions related to the licensure and regulation of ambulance services.

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

Section 1. That § 32-31-4 be AMENDED:

32-31-4. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to any authorized emergency vehicle responding to an emergency call if the driver sounds an audible siren or air horn or both or displays flashing, oscillating, or rotating beams of red light or combinations of red, blue, or white light visible one hundred eighty degrees to the front of the vehicle. The lights ~~shall~~ must be capable of warning the public of the presence of an emergency vehicle under normal atmospheric conditions. The speed limit set out in §§ 32-25-1.1 to 32-25-17, inclusive, does not apply to authorized emergency vehicles operated by law enforcement officers who are measuring the speed of other vehicles by use of the emergency vehicle speedometer. ~~Moreover, the~~ An ambulance driver ~~of an ambulance~~ who ~~has been~~ is certified pursuant to ~~§ 34-11-6~~ chapter 36-4B may operate ~~the emergency vehicle~~ an ambulance in excess of the speed limit without audible signals while operating outside the city limits of a municipality.

Section 2. That § 34-11-1 be AMENDED:

34-11-1. ~~Any~~ A county or municipality may ~~provide ambulance service and enter into agreements with other governmental subdivisions and with other persons for such services. Any county or municipality may appropriate funds for such purposes~~:

(1) Provide or contract for the provision of ambulance services; and ~~may enter into an agreement with such other governmental~~

(2) Contract with another political subdivision or ~~any competent~~ other person ~~to furnish funds for such purposes on an annual basis as may mutually be agreed upon. The funds shall be paid to such person or political subdivision when a claim has been duly filed, audited, and allowed by the county or municipality. Any county or municipality may license and regulate persons providing such services~~ for the provision of moneys to support ambulance services.

Section 3. That § 34-11-2 be AMENDED:

34-11-2. Terms used in this chapter mean:

(1) ~~"Air ambulance," an aircraft, fixed wing, or helicopter, that is designated or can be quickly modified to provide transportation of wounded, injured, sick, invalid, or incapacitated human beings or expectant mothers;~~

~~(2)~~ "Ambulance," a vehicle ~~for emergency care with~~ that has a driver compartment and a patient compartment, ~~carrying all~~ and carries the equipment and supplies needed ~~to provide emergency medical technician-basic level emergency~~ for the provision of emergency care, by personnel licensed or certified in accordance with chapter 36-4B, at the scene ~~and~~ of and enroute ~~to an appropriate medical facility~~ from an emergency;

~~(3)~~(2) "Ambulance service," any person or organization that is licensed by the department to provide ~~emergency~~:

(a) Emergency medical services ~~and~~ at the scene of and enroute from an emergency;

(b) Transportation of a patient ~~transport~~ from a medical facility to another medical facility;

(c) Transportation of a patient from a medical facility to a non-medical facility; and

(d) Transportation of a patient from a non-medical facility to a medical facility;

~~(4) "Emergency medical responder," any person certified by the Department of Health trained to provide simple, noninvasive care focused on lifesaving interventions for critical patients. The emergency medical responder renders on site emergency care while awaiting additional emergency medical services response from an emergency medical technician or higher level personnel. An emergency medical responder may not make decisions independently regarding the appropriate disposition of a patient;~~

~~(5) "Emergency medical technician" any person trained in emergency medical care in accordance with standards prescribed by rules promulgated pursuant to this chapter, who provides emergency medical services, including automated external defibrillation under indirect medical control, in accordance with the person's level of training;~~

~~(6) "License," the permit to provide ambulance service;~~

~~(7) "Licensing agency,"~~ (3) "Department," the Department of Health;

~~(8)~~(4) "Medical director," a physician licensed pursuant to chapter 36-4 who is responsible for providing medical supervision and direction to an ambulance service; and

~~(9) "Operator," any person or entity who has a license from the licensing agency to provide ambulance service;~~

(5) "Program director," a physician assistant licensed pursuant to chapter 36-4B, or a nurse practitioner licensed pursuant to chapter 36-9A, who is authorized by section 6 of this Act and is responsible for providing supervision and direction to an ambulance service in place of a medical director.

Section 4. That § 34-11-3 be AMENDED:

34-11-3. ~~No~~ Before an ambulance service ~~shall~~ may be operated in this

~~state unless the ambulance service has a currently valid license from the licensing agency to provide such~~, the service must be licensed by the department. In order to obtain licensure, the ambulance service must:

(1) Complete and submit an application developed by the department; and

(2) Submit a licensure fee established by the department, in rule, pursuant to chapter 1-26, but not exceeding twenty-five dollars.

A license issued in accordance with this section may only be renewed on or before June thirtieth in each even-numbered year.

Section 5. That chapter 34-11 be amended with a NEW SECTION:

An ambulance service licensed pursuant to this chapter must have a medical director, unless the ambulance service is granted a hardship exemption pursuant to section 6 of this Act.

Section 6. That a NEW SECTION be added to chapter 34-11:

If no physician licensed pursuant to chapter 36-4 is available and willing to serve as the medical director, the ambulance service may request a hardship exemption from the department that authorizes the ambulance service to have a program director.

To request a hardship exemption, an ambulance service must file an application with the department that documents the efforts made to obtain a medical director. The department shall grant the hardship exemption if the ambulance service demonstrates, to the satisfaction of the department, that no physician is available and willing to serve as the medical director.

A hardship exemption is valid for one year from the date of issuance. An ambulance service may renew a hardship exemption upon application to the department.

The granting or denial of a hardship exemption may be appealed to circuit court as provided by chapter 1-26.

The department shall promulgate rules, pursuant to chapter 1-26, to establish:

(1) The application form for a hardship exemption; and

(2) The standards used to evaluate a request for a hardship exemption.

The department shall post on its website a list of ambulance services granted a hardship exemption under this section.

Section 7. That § 34-11-5 be AMENDED:

34-11-5. The ~~Department of Health may adopt~~ department shall promulgate rules, pursuant to chapter 1-26, relating to the licensure and operation of an ambulance ~~services including patient care, personnel, medical and maintenance~~ service. The rules must include:

(1) The medical equipment and supplies that must be on board each ambulance;

(2) The maintenance requirements for medical equipment~~, sanitary conditions, and necessary supplies~~;

(3) Sanitary requirements;

(4) Licensure fees, not to exceed twenty-five dollars; and

(5) Quality assurance program standards.

Section 8. That § 34-11-5.1 be AMENDED:

34-11-5.1. Any ~~patient~~ information ~~identifying the~~ obtained by the staff of an ambulance service that contains a patient's name, address, diagnosis, ~~or~~ treatment ~~received by an ambulance service under the authority of this chapter is not a public record and~~, or other personally identifiable information is confidential, except ~~for official purposes~~ as authorized by law, and may not be published or disclosed without authorization from the patient or the patient's designee.

Section 9. That § 34-11-7 be AMENDED:

34-11-7. Each ~~operator shall record each trip on forms designated by the licensing agency and copies submitted to the department monthly. These records shall be maintained for a period of four years and upon request be made available to the department for inspection~~ ambulance service shall provide electronic trip records to the department, at the time and in the manner directed by the department. The department shall set forth the required content for these records in rules promulgated in accordance with chapter 1-26. The content must be statistical in nature and may not include any information that is confidential, as referenced in § 34-11-5.1.

Section 10. That § 34-11-8 be AMENDED:

34-11-8. ~~No provision of §§ 34-11-2 to 34-11-10, inclusive, nor any regulation adopted pursuant to said sections shall be construed as limiting any other provision of law delegating to the Department of Health the authority to regulate and~~The department may inspect ~~the warning lights, siren, brakes, and mechanical adequacy and safety of ambulances~~ an ambulance service for compliance with this chapter.

Section 11. That chapter 34-11 be amended with a NEW SECTION:

The department may deny the issuance or renewal of a license issued under this chapter, and may suspend, revoke, or impose probation on a license issued under this chapter, for a violation of any provision of this chapter or any rule adopted thereunder.

Section 12. That chapter 34-11 be amended with a NEW SECTION:

Any party aggrieved by any act, ruling, or decision of the department acting pursuant to section 11 of this Act may appeal the act, ruling, or decision under the provisions of chapter 1-26.

Section 13. That § 34-11-9 be AMENDED:

34-11-9. The following are exempt from the provisions of §§ 34-11-2 to ~~34-11-10~~ 34-11-8, inclusive:

(1) The occasional use of a privately owned vehicle or aircraft, not ordinarily used in the business of providing ambulance service or operating under the provisions of § 32-34-3;

(2) A vehicle ~~rendering services as an~~ that provides ambulance ~~in case of major catastrophe~~ services following a disaster or emergency ~~when ambulance services~~, if ambulances based in the ~~localities of the catastrophe or emergency~~ area are ~~insufficient or unavailable~~ unable to

~~render~~ provide the necessary services ~~required~~;

(3) ~~Ambulance services~~ An ambulance service based outside ~~the~~ of this state, ~~except that any such ambulance~~ unless the service is receiving a patient ~~within~~ in this state ~~for transport~~ and providing medical transportation to ~~a~~ another location ~~within~~ in this state ~~shall comply with §§ 34-11-2 to 34-11-10, inclusive, unless such transport is a medical emergency~~;

(4) ~~Vehicles~~ A vehicle owned and operated by a rescue ~~squads which are~~ squad, provided the vehicle is not regularly used as ~~ambulances except as part~~ an ambulance outside of rescue operations;

(5) ~~Ambulances~~ An ambulance owned and operated by ~~agencies of~~ the ~~United States~~ federal government; and

(6) ~~Coach services engaged~~ A vehicle used to provide coach service, by prior appointment ~~in the transportation of infirm or disabled individuals not requiring emergency~~, for persons who require non-emergency medical ~~care in transit~~ transportation.

Section 14. That § 34-11-11 be AMENDED:

34-11-11. Any ambulance service that provides advanced life support, as defined in § 36-4B-1, shall ~~conduct~~ implement a quality assurance program. ~~The quality assurance program shall include, at a minimum, a review of the appropriate use of oxygen therapy, the appropriate use of intravenous therapy, medication administration, and the appropriate use of cardiac monitors. The Department of Health shall develop a quality assurance program that meets the requirements of this section. The ambulance service may use the program developed by the department or the ambulance service may develop its own quality assurance program. The ambulance service shall compile the quality assurance reviews into an annual report, which shall be kept on file for at least three years and made available to the Department of Health upon request~~ that provides for chart review of all patient care provided by the ambulance service.

Section 15. That § 34-11-12 be AMENDED:

34-11-12. ~~The minimum personnel required on each~~ Each ambulance run ~~includes~~ must include:

(1) One emergency medical technician ~~certified by the Department of Health~~ or ~~an~~ one advanced life support personnel, licensed pursuant to chapter 36-4B; and

(2) One driver ~~who meets the requirements established by the Department of Health pursuant to rules promulgated pursuant to § 34-11-5~~ certified in accordance with chapter 36-4B.

Section 16. That § 34-11-4 be REPEALED:

~~The licensing agency shall provide application forms for the providing of ambulance service. A fee of not more than twenty-five dollars shall accompany each application, except for applications from state agencies. The licensing agency shall issue a license to any ambulance service which makes application to the agency providing such service complies with §§ 34-11-2 to 34-11-10, inclusive. A license shall be valid for a period of not more than two years.~~

Section 17. That § 34-11-5.2 be REPEALED:

~~No person may practice as an emergency medical responder or represent oneself as an emergency medical responder unless the person possesses a~~

~~certification from the department or holds a privilege to practice. The department shall promulgate rules, pursuant to chapter 1-26, for the application, qualifications, issuance, and renewal of a certification of an emergency medical responder. A certification issued under this section shall be renewed every two years.~~

Section 18. That § 34-11-6 be REPEALED:

~~No operator may provide ambulance service unless both the driver of the ambulance and the attendant on duty in the ambulance possess certification of completing an emergency care course approved by the Department of Health.~~

Section 19. That § 34-11-6.1 be REPEALED:

~~The Department of Health may deny the issuance or renewal of a certification or suspend or revoke the certification of any driver or attendant certified pursuant to § 34-11-6 upon satisfactory proof of the person's gross incompetence, or unprofessional or dishonorable conduct, including acts of gross incompetence, or unprofessional or dishonorable conduct occurring before July 1, 2006. For the purposes of this section, the Department of Health shall define, in rules pursuant to chapter 1-26, the terms, gross incompetence, unprofessional conduct, and dishonorable conduct.~~

Section 20. That § 34-11-6.2 be REPEALED:

~~Any party feeling aggrieved by any act, ruling, or decision of the Department of Health acting pursuant to § 34-11-6.1 may appeal such act, ruling, or decision under the provisions of chapter 1-26.~~

Section 21. That § 34-11-6.3 be REPEALED:

~~If a person holding a certification pursuant to § 34-11-6 is adjudged to be mentally incompetent by final order or adjudication of a court of competent jurisdiction, the Department of Health shall suspend such person's certification pursuant to chapter 1-26. The suspension shall continue until the person holding the certification is found or adjudged by such court to be restored to reason. The Department of Health may establish, by rules promulgated pursuant to chapter 1-26, probationary conditions that it deems necessary for the best interest of the person holding the certification.~~

Section 22. That § 34-11-6.4 be REPEALED:

~~Upon application, the Department of Health may reissue a certification issued pursuant to § 34-11-6 that has been cancelled, suspended, or revoked. A reissuance of a certification that has been cancelled, suspended, or revoked may not be made prior to one year after the cancellation, suspension, or revocation. The Department of Health may, by rules promulgated pursuant to chapter 1-26, provide for the manner, form, and condition for the reissuance of any certification pursuant to this section.~~

Section 23. That § 34-11-6.5 be REPEALED:

~~In addition to the requirements of § 34-11-6, each applicant for emergency medical technician certification must submit to a state and federal criminal background check. The applicant must submit a full set of the applicant's fingerprints to the department in a form and manner prescribed by the department. The department shall submit the applicant's fingerprints to the Division of Criminal Investigation to conduct a criminal background check by the division and the Federal Bureau of Investigation. The applicant must sign a release of information to the department, and pay any fee charged for the cost of~~

~~fingerprinting or conducting the background check.~~

~~Upon completion of the background check, the division shall deliver to the department all criminal history record information regarding the applicant, and the department shall consider this information in its determination to issue a certification to the applicant. The department may not issue a certification to an applicant before receiving this information. The department may only disseminate an applicant's information to a person employed by the department.~~

~~The department may require any certified emergency medical technician who is the subject of a disciplinary investigation to submit to a state and federal background check. The department may deny the issuance of, suspend, or revoke a certification for failure to submit to or cooperate with a background check.~~

Section 24. That § 34-11-10 be REPEALED:

~~Any person violating the provisions of §§ 34-11-2 to 34-11-9, inclusive, or the regulations adopted pursuant thereto is guilty of a Class 1 misdemeanor. A violation is also grounds, upon hearing held pursuant to chapter 1-26, for suspension or revocation of any prior authorized license.~~

Section 25. That § 34-11-13 be REPEALED:

~~Any ambulance service licensed pursuant to this chapter may be equipped with single-dose epinephrine. The department shall adopt statewide protocols for the administration of epinephrine. A copy of the protocols, signed by the medical director of the ambulance service, must be carried in any ambulance equipped with epinephrine. Any emergency medical technician who has received training approved by the department may, pursuant to the protocols, administer epinephrine.~~

Section 26. That § 34-11-14 be REPEALED:

~~Any ambulance service licensed pursuant to this chapter may be equipped with a supraglottic airway device. The department shall adopt statewide protocols for the use of supraglottic airway devices. A copy of the protocols, signed by the medical director of the ambulance service, must be carried in any ambulance equipped with a supraglottic airway device. Any emergency medical technician who has received training approved by the department may, pursuant to the protocols, utilize a supraglottic airway device.~~

Signed March 5, 2024

Chapter 127

(House Bill 1097)

An Act to authorize transportation activities by air ambulance operators.

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

Section 1. That a NEW SECTION be added to chapter 34-11:

An air ambulance operator may use a ground ambulance to transport a patient between:

(1) An acute care hospital and the airport at which the service maintains its ordinary and usual place of business; and

(2) The airport at which the air ambulance operator maintains its ordinary and usual place of business and an acute care hospital.

Section 2. That a NEW SECTION be added to chapter 34-11:

An air ambulance operator may utilize the operator's ground ambulance for the transfer of a patient from one healthcare facility to another healthcare facility if:

(1) The patient's attending medical practitioner determines that the patient requires a level of care that is not available without a transfer; and

(2) The operator is unable to use the operator's air ambulance to transport the patient due to:

(a) Mechanical problems; or

(b) Inclement weather conditions.

Signed February 21, 2024

Chapter 128

(Senate Bill 147)

An Act to provide for the distribution of informational materials regarding palliative care.

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

Section 1. That § 34-12-1.1 be AMENDED:

34-12-1.1. Terms used in this chapter mean:

(1) "Adult foster care home," a family-style residence that provides supervision of personal care, health services, and household services for no more than four aged, blind, physically disabled, developmentally disabled, or socially-emotionally disabled adults;

(2) "Ambulatory surgery center," any facility that is not part of a hospital and that is not an office of a dentist, whether for individual or group practice, in which surgical procedures requiring the use of general anesthesia are performed upon patients;

~~(2)~~(3) "Assisted living center," any institution, rest home, boarding home, place, building, or agency that is maintained and operated to provide personal care and services that meet some need beyond basic provision of food, shelter, and laundry;

(4) "Birth center," any health care facility at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth;

~~(3)~~(5) "Chemical dependency treatment facility," any facility that provides a structured inpatient treatment program for alcoholism or drug abuse;

(6) "Community living home," any family-style residence whose owner or

operator is engaged in the business of providing individualized and independent residential community living supports for compensation to at least one unrelated adult, but no more than four adults, and provides one or more regularly scheduled health related services, either administered directly or in collaboration with an outside health care provider. This term does not include any setting that is certified or accredited through chapter 34-20A, title 27A, or title 27B;

(7) "Critical access hospital," any nonprofit or public hospital providing emergency care on a twenty-four-hour basis located in a rural area that has limited acute inpatient services, focusing on primary and preventive care, and that has in effect an agreement with a general hospital that provides emergency and medical backup services and accepts patient referrals from the critical access hospital. For the purposes of this subdivision, a rural area is any municipality under fifty thousand population;

(8) "Freestanding emergency medical care facility," any facility structurally separate and distinct from a hospital that directly receives a person and provides emergency medical care;

~~(4)~~(9) "Health care facility," any institution, birth center, ambulatory surgery center, chemical dependency treatment facility, hospital, nursing facility, assisted living center, rural primary care hospital, adult foster care home, inpatient hospice, residential hospice, freestanding emergency care facility, community living home, rural emergency hospital, place, building, or agency in which any accommodation is maintained, furnished, or offered for the hospitalization, nursing care, or supervised care of the sick or injured;

~~(5)~~(10)"Hospital," any establishment with an organized medical staff with permanent facilities that include inpatient beds and is primarily engaged in providing by or under the supervision of physicians, to inpatients, any of the following services: diagnostic or therapeutic services for the medical diagnosis, treatment, or care of injured, disabled, or sick persons; obstetrical services including the care of the newborn; or rehabilitation services for injured, disabled, or sick persons. In no event may the inpatient beds include nursing facility beds or assisted living center beds unless the same are licensed as such pursuant to this chapter;

(11) "Inpatient hospice," any facility that is not part of a hospital or nursing home that is maintained and operated for the express or implied purpose of providing all levels of hospice care to terminally ill individuals on a twenty-four hour per day basis;

~~(6)~~(12)"Nursing facility," any facility that is maintained and operated for the express or implied purpose of providing care to one or more persons whether for consideration or not, who are not acutely ill but require nursing care and related medical services of such complexity as to require professional nursing care under the direction of a physician on a twenty-four hour per day basis; or a facility that is maintained and operated for the express or implied purpose of providing care to one or more persons, whether for consideration or not, who do not require the degree of care and treatment that a hospital is designed to provide, but who because of their mental or physical condition require medical care and health services that can be made available to them only through institutional facilities;

~~(7) "Critical access hospital," any nonprofit or public hospital providing emergency care on a twenty four hour basis located in a rural area that has limited acute inpatient services, focusing on primary and preventive~~

~~care, and that has in effect an agreement with a general hospital that provides emergency and medical backup services and accepts patient referrals from the critical access hospital. For the purposes of this subdivision, a rural area is any municipality under fifty thousand population;~~

~~(8) "Adult foster care home," a family style residence that provides supervision of personal care, health services, and household services for no more than four aged, blind, physically disabled, developmentally disabled, or socially emotionally disabled adults;~~

~~(9) "Inpatient hospice," any facility that is not part of a hospital or nursing home that is maintained and operated for the express or implied purpose of providing all levels of hospice care to terminally ill individuals on a twenty four hour per day basis;~~

~~(10)~~(13) "Palliative care," specialized medical care that is provided to a patient of any age, with a serious illness at any stage, and which:

(a) Is designed to improve a patient's quality of life, and that of the patient's family, by providing relief from the symptoms and stresses of the patient's illness;

(b) May be provided alongside curative treatments in primary and specialty settings, based on the needs of the patient and not on the prognosis; and

(c) Delivered collaboratively, in any setting, by a specially-trained interdisciplinary team that includes healthcare practitioners, nurses, social workers, spiritual care providers, and other patient support providers;

(14) "Residential hospice," any facility that is not part of a hospital or nursing home that is maintained and operated for the express or implied purpose of providing custodial care to terminally ill individuals on a twenty-four hour per day basis;

~~(11) "Birth center," any health care facility at which a woman is scheduled to give birth following a normal, uncomplicated pregnancy, but does not include a hospital or the residence of the woman giving birth;~~

~~(12) "Freestanding emergency medical care facility," any facility structurally separate and distinct from a hospital that directly receives a person and provides emergency medical care;~~

~~(13) "Community living home," any family style residence whose owner or operator is engaged in the business of providing individualized and independent residential community living supports for compensation to at least one unrelated adult, but no more than four adults, and provides one or more regularly scheduled health related services, either administered directly or in collaboration with an outside health care provider. This term does not include any setting that is certified or accredited through chapter 34-20A, title 27A, or title 27B;~~ and

~~(14)~~(15) "Rural emergency hospital," any nonprofit or public health care facility previously licensed as a hospital that provides emergency care on a twenty-four-hour basis, is located in a municipality under fifty thousand population that has no acute inpatient services, and that has in effect a transfer agreement with a level I or II trauma hospital, as designated by the Department of Health, to accept patients from the rural emergency hospital.

Section 2. That a NEW SECTION be added to chapter 34-12:

The Department of Health shall make available on its website informational material governing the provision of palliative care.

Signed March 6, 2024

Chapter 129

(House Bill 1125)

An Act to prohibit the chemical modification or conversion of industrial hemp and the sale or distribution of chemically modified or converted industrial hemp and to provide a penalty therefor.

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

Section 1. That § 34-20B-1 be AMENDED:

34-20B-1. Terms as used in this chapter mean:

(1) "Administer," to deliver a controlled drug or substance to the ultimate user or human research subject by injection, inhalation, or ingestion, or by any other means;

(2) "Agent," an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser and includes a common or contract carrier, public warehouseman, or employee thereof;

(3) "Chemically derived cannabinoid," a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant. The term does not include:

(a) Cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst;

(b) Non-psychoactive cannabinoids; or

(c) Cannabinoids in a topical cream product;

~~(3)~~(4) "Control," to add, remove, or change the placement of a drug, substance, or immediate precursor under §§ 34-20B-27 and 34-20B-28;

~~(4)~~(5) "Controlled substance analogue," any of the following:

(a) A substance that differs in its chemical structure from a controlled substance listed in or added to Schedule I or II only by substituting one or more hydrogens with halogens, or by substituting one halogen with a different halogen;

(b) A substance that is an alkyl homolog of a controlled substance listed in or added to Schedule I or II; or

(c) A substance intended for human consumption:

(i) The chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; or

(ii) That has a stimulant, depressant, or hallucinogenic effect

on the central nervous system that is substantially similar to, or greater than, the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II;

The term, controlled substance analogue, does not include a controlled substance or any substance for which there is an approved new drug application;

~~(5)~~(6) "Counterfeit substance," a controlled drug or substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who manufactured, distributed, or dispensed such substance and which thereby falsely purports or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser;

~~(6)~~(7) "Deliver" or "delivery," the actual, constructive, or attempted transfer of a controlled drug, substance, or marijuana whether or not there exists an agency relationship;

~~(7)~~(8) "Department," the Department of Health created by chapter 1-43;

~~(8)~~(9) "Dispense," to deliver a controlled drug or substance to the ultimate user or human research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for such delivery, and a dispenser is one who dispenses;

~~(9)~~(10) "Distribute," to deliver a controlled drug, substance, or marijuana. A distributor is a person who delivers a controlled drug, substance, or marijuana;

~~(10)~~(11) "Hashish," the resin extracted from any part of any plant of the genus cannabis that contains a delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent on a dry weight basis;

~~(11)~~(12) "Imprisonment," imprisonment in a state correctional facility unless the penalty specifically provides for imprisonment in the county jail;

~~(12)~~(13) "Manufacture," the production, preparation, propagation, compounding, or processing of a controlled drug or substance, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis. A manufacturer includes any person who packages, repackages, or labels any container of any controlled drug or substance, except practitioners who dispense or compound prescription orders for delivery to the ultimate consumer;

~~(13)~~(14) "Marijuana," all parts of any plant of the genus cannabis, whether growing or not; the seeds thereof; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant or its seeds. The term does not include fiber produced from the mature stalks of the plant, or oil or cake made from the seeds of the plant, or the resin when extracted from any part of the plant, or a drug product approved by the United States Food and Drug Administration. The term does not include the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

~~(14)~~(15) "Narcotic drug," any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) Opium, coca leaves, or opiates;

(b) A compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or opiates;

(c) A substance, and any compound, manufacture, salt, derivative, or preparation thereof, that is chemically identical to any of the substances referred to in subsections (a) and (b) of this subdivision;

The term, narcotic drug, does not include decocainized coca leaves or extracts of coca leaves, which extracts do not contain cocaine or ecgonine;

~~(15)~~(16) "Opiate" or "Opioid," any controlled drug or substance having an addiction-sustaining liability similar to morphine or being capable of conversion into a drug having such addiction-forming or addiction-sustaining liability;

~~(16)~~(17) "Opium poppy," the plant of the species papaver somniferum L., except the seeds thereof;

~~(17)~~(18) "Person," any corporation, association, limited liability company, partnership, or one or more individuals;

~~(18)~~(19) "Poppy straw," all parts, except the seeds, of the opium poppy, after mowing;

~~(19)~~(20) "Practitioner,":

(a) A physician licensed pursuant to chapter 36-4, a physician assistant licensed pursuant to chapter 36-4A, a dentist licensed pursuant to chapter 36-6A, an optometrist licensed pursuant to chapter 36-7, a podiatrist licensed pursuant to chapter 36-8, a certified registered nurse anesthetist licensed pursuant to chapter 36-9, a certified nurse practitioner or certified nurse midwife licensed pursuant to chapter 36-9A, a pharmacist licensed pursuant to chapter 36-11, or a veterinarian licensed pursuant to chapter 36-12;

(b) A government employee acting within the scope of employment; and

(c) A person permitted by a certificate issued by the department to distribute, dispense, conduct research with respect to, or administer a substance controlled by this chapter;

~~(20)~~(21) "Prescribe," an order of a practitioner for a controlled drug or substance;

~~(21)~~(22) "Production," the manufacture, planting, cultivation, growing, or harvesting of a controlled drug or substance;

~~(22)~~(23) "Ultimate user," a person who lawfully possesses a controlled drug or substance for personal use or for the use of a member of the person's household, or for administration to an animal owned by the person or by a member of the person's household.

Section 2. That a NEW SECTION be added to chapter 34-20B:

No person or entity may:

(1) Chemically modify or convert industrial hemp as defined in § 38-35-1, or engage in any process that converts cannabidiol, into delta-8 tetrahydrocannabinol, delta-9 tetrahydrocannabinol, delta-10 tetrahydrocannabinol, or any other tetrahydrocannabinol isomer, analog, or derivative; or

(2) Sell or distribute industrial hemp or an industrial hemp product that contains chemically derived cannabinoids or cannabinoids created by chemically modifying or converting a hemp extract.

A violation of this section is a Class 2 misdemeanor.

Section 3. That § 38-35-1 be AMENDED:

38-35-1. Terms used in this chapter mean:

(1) "Applicant," a person, including the state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, limited liability company, association, or trust; and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or limited liability company, applying for an industrial hemp grower license, processor license, or both;

(2) "Department," the Department of Agriculture and Natural Resources;

(3) "Chemically derived cannabinoid," a chemical substance created by a chemical reaction that changes the molecular structure of any chemical substance derived from the cannabis plant. The term does not include:

(a) Cannabinoids produced by decarboxylation from a naturally occurring cannabinoid acid without the use of a chemical catalyst;

(b) Non-psychoactive cannabinoids; or

(c) Cannabinoids in a topical cream product;

~~(3)~~(4) "Greenhouse," any indoor structure or enclosed building capable of continuous cultivation throughout the year, no less than two thousand eight hundred and eighty square feet, not part of a residential dwelling. Greenhouses may contain multiple lots that are separated and identified;

~~(4)~~(5) "Hemp" or "industrial hemp," the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

~~(5)~~(6) "Key participant," a sole proprietor, a partner in a partnership, a principal executive officer for a government entity, or a person with executive managerial control in a corporation or limited liability company;

~~(6)~~(7) "Industrial hemp product," a finished manufactured product, or consumer product made from industrial hemp with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent, derived from or made by processing industrial hemp. This term does not include a product containing chemically derived cannabinoids, including:

(a) Delta-8 tetrahydrocannabinol, also known as delta-8-THC;

(b) Delta-10 tetrahydrocannabinol, also known as delta-10-THC;

(c) Tetrahydrocannabinol acetate, also known as THC-O-acetate or THC-O;

(d) Hexahydrocannabinol, also known as HHC; or

(e) Tetrahydrocannabiphoral, also known as THCP;

~~(7)~~(8) "Lot," a contiguous area in a field or greenhouse containing the same variety or strain of hemp throughout the area;

~~(8)~~(9) "Measurement of uncertainty," the parameter associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement;

~~(9)~~(10) "Process" or "processing," to render raw industrial hemp plants or plant parts from their natural or original state to an initial processed form. Typical processing includes decortication, devitalization, crushing, or extraction;

~~(10)~~(11) "Processor," a person that converts raw hemp into an initial processed form;

~~(11)~~(12) "Produce" or "producing," to grow, germinate, dry, sort, grade, bale, grind, mill, pelletize, and harvest hemp plants in the field or in a greenhouse;

~~(12)~~(13) "Product in process," the product being processed by a state licensed hemp processor or the transfer of that product at no higher than one percent total delta-9 tetrahydrocannabinol between one or more licensed hemp processors during the process of processing state or federally approved, lab-tested biomass from a licensed grower into a finished industrial hemp product;

~~(13)~~(14) "Remediation," the process of rendering non-compliant cannabis compliant using methods accepted by the USDA;

~~(14)~~(15) "Secretary," the secretary of the Department of Agriculture and Natural Resources;

~~(15)~~(16) "Total delta-9 THC or total delta-9 tetrahydrocannabinol," the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis; and

~~(16)~~(17) "Transporter," any person transporting, hauling, or delivering immature or mature hemp or product in process, but not industrial hemp product or sterilized seeds that are incapable of beginning germination.

Signed March 18, 2024

Chapter 130

(House Bill 1027)

An Act to modify substances listed on the controlled substances schedule and to declare an emergency.

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

Section 1. That § 34-20B-12 be AMENDED:

34-20B-12. Any of the following substances, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, is included in Schedule I, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

(1) Acetylmethadol;

(2) Allylprodine;

(3) Alphacetylmethadol, except levo-alphacetylmethadol, also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM;

(4) Alphameprodine;

(5) Alphamethadol;

(6) Benzethidine;

(7) Betacetylmethadol;

(8) Betameprodine;

(9) Betamethadol;

(10) Betaprodine;

(11) Clonitazene;

(12) Dextromoramide;

(13) Diampromide;

(14) Diethyliambutene;

(15) Dimenoxadol;

(16) Dimepheptanol;

(17) Dimethyliambutene;

(18) Dioxaphetyl butyrate;

(19) Dipipanone;

(20) Ethylmethylthiambutene;

(21) Etonitazene;

(22) Etoxeridine;

(23) Fenethylline;

(24) Furethidine;

~~(24)~~(25) Hydroxypethidine;

~~(25)~~(26) Ketobemidone;

~~(26)~~(27) Levomoramide;

~~(27)~~(28) Levophenacylmorphan;

~~(28)~~(29) Mecloqualone;

~~(29)~~(30) Morpheridine;

~~(30)~~(31) Noracymethadol;

~~(31)~~(32) Norlevorphanol;

~~(32)~~(33) Normethadone;

~~(33)~~(34) Norpipanone;

~~(34)~~(35) Phenadoxone;

~~(35)~~(36) Phenampromide;

~~(36)~~(37) Phenomorphan;

~~(37)~~(38) Phenoperidine;

~~(38)~~(39) Piritramide;

~~(39)~~(40) Proheptazine;

~~(40)~~(41) Properidine;

~~(41)~~(42) Racemoramide;

~~(42)~~(43) Trimeperidine;

~~(43)~~(44) Methaqualone;

~~(44)~~(45) N-benzylpiperazine;

~~(45)~~(46) 4-chloro-N-[1-[2-(4-nitrophenyl)ethyl]-2-piperidinylidene]-benzenesulfonamide, W-18;

~~(46)~~(47) N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine, also known as isotonitazene;

~~(47)~~(48) 2-(2-(4-butoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (butonitazene);

~~(48)~~(49) 2-(2-(4-ethoxybenzyl)-1H-benzimidazol-1-yl)-N,N-diethylethan-1-amine (etodesnitazene, etazene);

~~(49)~~(50) N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine) (flunitazene);

~~(50)~~(51) N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (metodesnitazene);

~~(51)~~(52) N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine (metonitazene);

~~(52)~~(53) 2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1H-benzimidazole (N-pyrrolidino etonitazene, etonitazepyne); ~~and~~

~~(53)~~(54) N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine (protonitazene);

(55) 7-[(10,11-dihydro-5 H -dibenzo[a,d]cyclohepten-5-yl)amino]heptanoic acid) (amineptine);

(56) N -phenyl- N’ -(3-(1-phenylpropan-2-yl)-1,2,3-oxadiazol-3-ium-5-yl)carbamimidate) (mesocarb); and

(57) N -methyl-1-(thiophen-2-yl)propan-2-amine (methiopropamine).

Section 2. That § 34-20B-13 be AMENDED:

34-20B-13. Any of the following opium derivatives and opiates, their salts, isomers, esters, ethers, and salts of isomers, esters, and ethers, is included in Schedule I, unless specifically excepted, whenever the existence of such salts, isomers, esters, ethers, and salts of isomers, esters, and ethers is possible within the specific chemical designation:

(1) Acetylcodone;

(2) Benzylmorphine;

(3) Codeine methylbromide;

(4) Codeine-N-Oxide;

(5) Desomorphine;

(6) Drotebanol;

(7) Heroin;

(8) Hydromorphinol;

(9) ~~Methydesorphine~~Methyldesorphine;

(10) Methylhydromorphine;

(11) Morphine methylbromide;

(12) Morphine methylsulfonate;

(13) Morphine-N-Oxide;

(14) Myrophine;

(15) Nicocodeine;

(16) Nicomorphine;

(17) Normorphine;

(18) Thebacon;

(19) 3-Methylfentanyl;

(20) Fentanyl analogs. Any substituted derivatives of fentanyl unless specifically excepted, listed in another schedule, or contained within a pharmaceutical product approved by the United States Food and Drug Administration, that is structurally related to fentanyl by modification in any one or more of the following ways:

(a) By replacement of the phenyl portion of the phenethyl group by any monocycle whether or not further substituted in or on the monocycle;

(b) By substitution in or on or replacement of the phenethyl group with alkyl, alkenyl, alkoxyl, hydroxyl, halo, haloalkyl, amino, or nitro groups;

(c) By substitution in or on the piperadine ring with alkyl, alkenyl, alkoxyl, ester, ether, hydroxyl, halo, haloalkyl, amino, phenyl,

substituted phenyl, or nitro groups;

(d) By replacement of the aniline ring with any aromatic monocycle whether or not further substituted in or on the aromatic monocycle; or

(e) By the replacement of the N-propionyl group by another acyl group.

Some trade and other names: N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (acetyl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide (furanyl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide (acryl fentanyl, acryloylfentanyl); N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide (ortho-fluorofentanyl or 2-fluorofentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide (tetrahydrofuranyl fentanyl); 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide (methoxyacetyl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopropanecarboxamide (cyclopropyl fentanyl), N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-pentanamide (valeryl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylbutyramide (butyrl fentanyl); N-[1-(2-hydroxy-2-thiophen-2-ylethyl)piperidin-4-yl]-N-phenylpropanamide (Beta-Hydroxythiofentanyl); N-(4-fluorophenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (para-fluorobutyryl fentanyl); N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)piperidin-4-yl]butanamide (para-methoxybutyryl fentanyl); N-(4-chlorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (para-chloroisobutyryl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylisobutyramide (isobutyryl fentanyl); N-(1-phenethylpiperidin-4-yl)-N-phenylcyclopentanecarboxamide (cyclopentyl fentanyl); N-(2-fluorophenyl)-2-methoxy-N-(1-phenethylpiperidin-4-yl)acetamide (ocfentanil); N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide (para-fluoroisobutyryl fentanyl); (E)-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide (Crotonyl fentanyl);

(21) 1-Methyl-4-phenyl-4-propionoxypiperidine;

(22) 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine;

(23) 3,4-dichloro-N[2-(dimethylamino)cyclohexyl]-N-methylbenzamide (U-47700);

(24) 1-cyclohexyl-4-(1,2-diphenylethyl)piperazine (MT-45);

(25) 3,4-dichloro-N-[(1dimethylamino)cyclohexylmethyl]benzamide (AH-7921);

(26) 2-(2,4-dichlorophenyl)-N-2-(dimethylamino)cyclohexyl)-N-methylacetamide (U-48800);

(27) Trans-3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methyl-benzamide (U-49900);

(28) N-[2-(dimethylamino)cyclohexyl]-N-methyl-1,3-benzodioxole-5-carboxamide (Methylenedioxy-U-47700);

(29) 3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-isopropylbenzamide (Isopropyl-U-47700);

(30) 1-(1,2-Diphenylethyl)piperidine (Diphenidine);

(31) N-Ethyl-1,2-diphenylethylamine (Ephenidine); ~~and~~

(32) 1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-yl)-1,3-dihydro-2H-benzo[d]imidazol-2-one (Brorphine); and

(33) 1-methoxy-3-[4-(2-methoxy-2-phenylethyl)piperazin-1-yl]-1-phenylpropan-2-ol) (Zipeprol).

Section 3. That § 34-20B-25 be AMENDED:

34-20B-25. The following are included in Schedule IV:

(1) Chlordiazepoxide, but not including librax (chlordiazepoxide hydrochloride and clindinium bromide) or menrium (chlordiazepoxide and water soluble esterified estrogens);

(2) Clonazepam;

(3) Clorazepate;

(4) Diazepam;

(5) Flunitrazepam;

(6) Flurazepam;

(7) Mebutamate;

(8) Oxazepam;

(9) Prazepam;

(10) Lorazepam;

(11) Triazolam;

(12) Any substance that contains any quantity of a benzodiazepine, or salt of benzodiazepine, except substances that are specifically listed in other schedules;

(13) Alprazolam;

(14) Midazolam;

(15) Temazepam;

(16) Cathine;

(17) Fencamfamine;

(18) Fenproporex;

(19) Mefenorex;

(20) Pyrovalerone;

(21) Propoxyphene;

(22) Pentazocine;

(23) Diethylpropion;

(24) Ethchlorvynol;

(25) Ethinamate;

(26) ~~Fenfluramine;~~

~~(27)~~ Mazindol;

~~(28)~~(27) Mephobarbital;

~~(29)~~(28) Methohexitol;

~~(30)~~(29) Paraldehyde;

~~(31)~~(30) Pemoline;

~~(32)~~(31) Petrichloral;

~~(33)~~(32) Phentermine;

~~(34)~~(33) Barbital;

~~(35)~~(34) Phenobarbital;

~~(36)~~(35) Meprobamate;

~~(37)~~(36) Zolpidem;

~~(38)~~(37) Butorphanol;

~~(39)~~(38) Modafinil, including its salts, isomers, and salts of isomers;

~~(40)~~(39) Sibutramine;

~~(41)~~(40) Zaleplon;

~~(42)~~(41) Dichloralphenazone;

~~(43)~~(42) Zopiclone, also known as eszopiclone, including its salts, isomers, and salts of isomers;

~~(44)~~(43) Pregabalin;

~~(45)~~(44) Lacosamide;

~~(46)~~(45) Fospropofol, including its salts, isomers, and salts of isomers;

~~(47)~~(46) Clobazam;

~~(48)~~(47) Carisoprodol, including its salts, isomers, and salts of isomers;

~~(49)~~(48) Ezogabine,[-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester], including its salts, isomers, and salts of isomers;

~~(50)~~(49) Lorcaserin, any material, compound, mixture, or preparation that contains any quantity of the following substances, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible;

~~(51)~~(50) Alfaxalone, 5[alpha]-pregnan-3[alpha]-ol-11,20-dione, including its salts, isomers, and salts of isomers;

~~(52)~~(51) Tramadol, 2-[(dimethylamino)methyl]-1-(3-methoxyphenyl)cyclohexanol, its salts, optical and geometric isomers and salts of these isomers;

~~(53)~~(52) Suvorexant, including its salts, isomers, and salts of isomers;

~~(54)~~(53) Eluxadoline,(5-[[[(2S)-2-amino-3-[4-aminocarbonyl)-2,6-dimethylphenyl]-1-oxopropyl][(1S)-1-(4-phenyl-1H-imidazol-2-yl)ethyl]amino]methyl]-2-methoxybenzoic acid) including its optical isomers and its salts, isomers, and salts of isomers;

~~(55)~~(54) Brivaracetam;

~~(56)~~(55) Solriamfetol (2-amino-3-phenylpropyl carbamate; benzenepropanol, beta-amino-, carbamate (ester)), including its salts, isomers, and salts of isomers whenever the existence of the salts, isomers, and salts of isomers is possible;

~~(57)~~(56) Brexanolone, (3[alpha]-hydroxy-5[alpha]-pregnan-20-one), including its salts, isomers, and salts of isomers whenever the existence of the salts, isomers, and salts of isomers is possible;

~~(58)~~(57) Cenobamate ([(1R)-1-(2-chlorophenyl)-2-(tetrazol-2-yl)ethyl] carbamate; 2H-tetrazole-2-ethanol, alpha-(2-chlorophenyl)-, carbamate (ester), (alphaR)-; carbamic acid (R)-(+)-1-(2-chlorophenyl)-2-(2H-tetrazol-2-yl)ethyl ester);

~~(59)~~(58) Lasmiditan [2,4,6-trifluoro-N-(6-(1-methylpiperidine-4-carbonyl)pyridine-2-yl)-benzamide];

~~(60)~~(59) Lemborexant, including its salts, isomers, and salts of isomers;

~~(61)~~(60) Remimazolam;

~~(62)~~(61) Serdexmethylphenidate, including its salts, isomers, and salts of isomers;

~~(63)~~(62) Daridorexant, including its salts, isomers, and salts of isomers; ~~and~~

~~(64)~~(63) Ganaxolone, including its salts; and

(64) Zuranolone.

Section 4. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 14, 2024

Chapter 131

(House Bill 1028)

An Act to classify xylazine as a Schedule III controlled substance, establish permissible uses, and to declare an emergency.

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

Section 1. That chapter 34-20B be amended with a NEW SECTION:

Any material, compound, mixture, or preparation that contains xylazine is a Schedule III controlled drug or substance, except in the following cases:

(1) Dispensing, prescribing, or administering, to an animal, a drug containing xylazine that has been approved by the United States secretary of health and human services under 21 U.S.C. § 360b (January 1, 2024);

(2) Dispensing, prescribing, or administering xylazine to an animal that is permissible under 21 U.S.C. § 360b(a)(4) (January 1, 2024);

(3) Manufacturing, distributing, or using xylazine as an active pharmaceutical ingredient for manufacturing an animal drug:

(a) Approved under 21 U.S.C. § 360b (January 1, 2024); or

(b) Issued an investigation use exemption under 21 U.S.C. § 360b(j) (January 1, 2024);

(4) Manufacturing, distributing, or using a xylazine bulk chemical for pharmaceutical compounding by a licensed pharmacist or veterinarian; or

(5) Any other use approved or permissible under 21 U.S.C. § 301, et seq. (January 1, 2024).

Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 12, 2024

Chapter 132

(Senate Bill 42)

An Act to modify provisions related to medical cannabis.

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

Section 1. That § 34-20G-1 be AMENDED:

34-20G-1. Terms used in this chapter mean:

(1) "Allowable amount of cannabis,":

(a) Three ounces of cannabis or less;

(b) The quantity of cannabis products as established by rules promulgated by the department under § 34-20G-72;

(c) If the cardholder has a registry identification card allowing cultivation, two flowering cannabis plants and two cannabis plants that are not flowering; and

(d) If the cardholder has a registry identification card allowing cultivation, the amount of cannabis and cannabis products that were produced from the cardholder's allowable plants, if the cannabis and cannabis products are possessed at the same property where the plants were cultivated;

(2) "Bona fide practitioner-patient relationship," a treatment or consulting relationship between a practitioner and patient, during which:

(a) The practitioner completes, at the initial visit, an assessment of the patient's medical history and current medical condition, including an appropriate in-person physical examination;

(b) The patient is under the practitioner's care for the debilitating medical condition that qualifies the patient for the medical use of cannabis or has been referred by the practitioner caring for the patient's debilitating medical condition that qualifies the patient for the medical use of cannabis to another practitioner;

(c) The patient has a reasonable expectation that the practitioner providing the written certification will continue to provide follow-up care to the patient to monitor the medical use of cannabis; and

(d) The relationship is not for the sole purpose of providing a written

certification for the medical use of cannabis unless the patient has been referred by a practitioner providing care for the debilitating medical condition that qualifies the patient for the medical use of cannabis;

(3) "Cannabis products," any concentrated cannabis, cannabis extracts, and products that are infused with cannabis or an extract thereof, and are intended for use or consumption by humans. The term includes edible cannabis products, beverages, topical products, ointments, oils, and tinctures;

(4) "Cannabis product manufacturing facility," an entity registered with the department pursuant to this chapter that acquires, possesses, manufactures, delivers, transfers, transports, supplies, or sells cannabis products to a medical cannabis dispensary;

(5) "Cannabis testing facility" or "testing facility," an independent entity registered with the department pursuant to this chapter to analyze the safety and potency of cannabis;

(6) "Cardholder," a qualifying patient or a designated caregiver who has been issued and possesses a valid registry identification card;

(7) "Cultivation facility," an entity registered with the department pursuant to this chapter that acquires, possesses, cultivates, delivers, transfers, transports, supplies, or sells cannabis and related supplies to a medical cannabis establishment;

(8) "Debilitating medical condition,":

(a) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: cachexia or wasting syndrome; severe, debilitating pain; severe nausea, except nausea associated with pregnancy; seizures; or severe and persistent muscle spasms;

(b) Acquired immune deficiency syndrome or positive status for human immunodeficiency virus;

(c) Amyotrophic lateral sclerosis;

(d) Multiple sclerosis;

(e) Cancer or its treatment, if associated with severe or chronic pain, nausea or severe vomiting, or cachexia or severe wasting;

(f) Crohn's disease;

(g) Epilepsy and seizures; or

(h) Post-traumatic stress disorder;

(9) "Department," the Department of Health;

(10) "Designated caregiver," an individual who:

(a) Is at least twenty-one years of age;

(b) Has agreed to assist with a qualifying patient's medical use of cannabis;

(c) Has not been convicted of a disqualifying felony offense; and

(d) Assists no more than five qualifying patients with the medical use of cannabis, unless the designated caregiver's qualifying patients

each reside in or are admitted to a health care facility, as defined in § 34-12-1.1, an accredited prevention or treatment facility, as defined in § 34-20A-2, a mental health center, as defined in § 27A-1-1, a child welfare agency, as defined in § 26-6-1, or a community support provider or community services provider, as defined in § 27B-1-17, where the designated caregiver is employed;

(11) "Disqualifying felony offense," a violent crime that was classified as a felony in the jurisdiction where the person was convicted;

(12) "Edible cannabis products," any product that:

(a) Contains or is infused with cannabis or an extract thereof;

(b) Is intended for human consumption by oral ingestion; and

(c) Is presented in the form of foodstuffs, beverages, ~~extracts,~~ oils, tinctures, or other similar products;

(13) "Enclosed, locked facility," any closet, room, greenhouse, building, or other enclosed area that is equipped with locks or other security devices that permit access only by a cardholder or a person allowed to cultivate the plants. Two or more cardholders who reside in the same dwelling may share one enclosed, locked facility for cultivation;

(14) "Flowering cannabis plant," the reproductive state of the cannabis plant in which the plant shows physical signs of flower budding out of the nodes of the stem;

(15) "Medical cannabis" or "cannabis," marijuana as defined in § 22-42-1;

(16) "Medical cannabis dispensary" or "dispensary," an entity registered with the department pursuant to this chapter that acquires, possesses, stores, delivers, transfers, transports, sells, supplies, or dispenses cannabis, cannabis products, paraphernalia, or related supplies and educational materials to cardholders;

(17) "Medical cannabis establishment," a cultivation facility, a cannabis testing facility, a cannabis product manufacturing facility, or a dispensary;

(18) "Medical cannabis establishment agent," an owner, officer, board member, employee, or volunteer at a medical cannabis establishment;

(19) "Medical use," includes the acquisition, administration, cultivation, manufacture, delivery, harvest, possession, preparation, transfer, transportation, or use of cannabis or paraphernalia relating to the administration of cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptom associated with the patient's debilitating medical condition. The term does not include:

(a) The cultivation of cannabis by a nonresident cardholder;

(b) The cultivation of cannabis by a cardholder who is not designated as being allowed to cultivate on the cardholder's registry identification card; or

(c) The extraction of resin from cannabis by solvent extraction unless the extraction is done by a cannabis product manufacturing facility;

(20) "Nonresident cardholder," a person who:

(a) Has been diagnosed with a debilitating medical condition, or is the

parent, guardian, conservator, or other person with authority to consent to the medical treatment of a person who has been diagnosed with a debilitating medical condition;

(b) Is not a resident of this state or who has been a resident of this state for fewer than forty-five days;

(c) Was issued a currently valid registry identification card or its equivalent by another state, district, territory, commonwealth, insular possession of the United States, or country recognized by the United States that allows the person to use cannabis for medical purposes in the jurisdiction of issuance; and

(d) Has submitted any documentation required by the department, and has received confirmation of registration;

(21) "Practitioner," a physician, physician assistant, or advanced practice registered nurse, who is licensed with authority to prescribe drugs to humans. In relation to a nonresident cardholder, the term means a person who is licensed with authority to prescribe drugs to humans in the state of the patient's residence;

(22) "Qualifying patient," a person who has been diagnosed by a practitioner as having a debilitating medical condition;

(23) "Registry identification card," a document issued by the department that identifies a person as a registered qualifying patient or registered designated caregiver, or documentation that is deemed a registry identification card pursuant to §§ 34-20G-29 to 34-20G-42, inclusive;

(24) "Safety-sensitive job," any position with tasks or duties that an employer reasonably believes could:

(a) Cause the illness, injury, or death of an individual; or

(b) Result in serious property damage;

(25) "Under the influence of cannabis," any abnormal mental or physical condition that tends to deprive a person of clearness of intellect and control that the person would otherwise possess, as the result of consuming any degree of cannabis or cannabis products; and

(26) "Written certification," a document dated and signed by a practitioner:

(a) Stating that the patient has a qualifying debilitating medical condition or symptom associated with the debilitating medical condition;

(b) Affirming that the document is made in the course of a bona fide practitioner-patient relationship;

(c) Specifying the qualifying patient's debilitating medical condition; and

(d) Specifying the expiration date of the qualifying patient's written certification, pursuant to § 34-20G-43; and

(e) Specifying whether the practitioner has previously issued the patient a written certification and the date of that written certification.

Section 2. That § 34-20G-49 be AMENDED:

34-20G-49. ~~If the registered qualifying patient's certifying practitioner~~

~~notifies the department in writing that the~~ A registry identification card is void if the certifying practitioner notifies the department in writing that:

(1) The registered qualifying patient has ceased to suffer from a debilitating medical condition; or ~~that the practitioner~~

(2) The practitioner no longer believes the patient would receive therapeutic or palliative benefit from the medical use of cannabis~~, the card is void. However, the~~.

The registered qualifying patient ~~shall have~~ has fifteen days to dispose of ~~or give away~~ any cannabis in the registered qualifying patient's possession.

Section 3. That § 34-20G-57 be AMENDED:

34-20G-57. The department shall issue a renewal registration certificate within ~~ten~~ forty-five days of receipt of the prescribed renewal application and renewal fee from a medical cannabis establishment ~~if the establishment's registration certificate is not under suspension and has not been revoked~~.

Section 4. That § 34-20G-65.1 be AMENDED:

34-20G-65.1. A sample of cannabis or cannabis products submitted to a testing facility must be collected by a designated representative of the testing facility. ~~Testing is only required for~~

A medical cannabis establishment shall ensure that testing is conducted on a sample of cannabis ~~and~~ or cannabis ~~products intended for retail sale to a cardholder or nonresident cardholder~~ product immediately prior to the transfer of the cannabis for retail sale or cannabis product in final form to another medical cannabis establishment.

Section 5. That § 34-20G-70 be AMENDED:

34-20G-70. A dispensary may not dispense more than three ounces of cannabis or a cannabis product to a registered qualifying patient or a nonresident cardholder, directly or via a designated caregiver, in any fourteen-day period.

Before cannabis or a cannabis product may be dispensed to a cardholder or nonresident cardholder, a dispensary agent must verify:

(1) ~~Shall verify that~~ That the registry identification card or registration presented to the dispensary is valid;

(2) ~~Shall verify the~~ The identity of the person by requiring the person to present a valid photographic identification document issued by this state, another state, tribe, or the federal government; and

(3) ~~May~~Through the department's inventory tracking system, that the registered qualifying patient or nonresident cardholder has not exceeded the allowable limit of cannabis or cannabis product in the applicable fourteen-day period.

A dispensary agent may not dispense an amount of cannabis or cannabis product to a person that would cause the person to possess more than the allowable amount of cannabis~~; and~~

~~(4) Shall verify that the dispensary is the current dispensary that was designated by the cardholder or nonresident cardholder~~.

Section 6. That § 34-20G-71 be AMENDED:

34-20G-71. ~~A dispensary may not dispense more than three ounces of cannabis to a nonresident cardholder or a registered qualifying patient, directly or via a designated caregiver, in any fourteen-day period. A dispensary shall ensure compliance with the limitation under this section by maintaining~~

A dispensary shall maintain internal, confidential records ~~that include records~~ specifying how much cannabis is dispensed to a nonresident cardholder or registered qualifying patient and whether it is dispensed directly to a registered qualifying patient or to the designated caregiver.

Section 7. That § 34-20G-80 be AMENDED:

34-20G-80. The department may ~~on its own motion or on complaint, after investigation and opportunity for a public hearing at which the medical cannabis establishment has been afforded an opportunity to be heard~~, after notice and hearing in accordance with chapter 1-26, impose probation, impose a fine, suspend, or revoke a registration certificate for multiple negligent or knowing violations of this chapter, or for a serious and knowing violation of this chapter, by the registrant or any of its agents ~~of this chapter~~.

The department may not:

(1) Impose a probation period that exceeds six months; or

(2) Suspend a registration certificate for a period that exceeds six months, except for a serious violation of patient health and safety, in which case the suspension may not exceed one year.

Section 8. That § 34-20G-81 be AMENDED:

34-20G-81. The department shall provide notice of probation, fine, suspension, or revocation ~~, fine, or other sanction, as well as the required notice of the hearing,~~ by mailing the same in writing to the medical cannabis establishment at the address on the registration certificate. ~~A suspension may not be for a longer period than six months.~~

Section 9. That § 34-20G-87 be AMENDED:

34-20G-87. ~~Data~~ Except as provided in § 34-20E-2, data kept or maintained by the department may not be used for any purpose not provided for in this chapter and may not be combined or linked in any manner with any other list or database.

Section 10. That § 34-20G-88 be AMENDED:

34-20G-88. Confidential data or data that is not a public record kept or maintained by the department may only be disclosed as necessary to:

(1) Verify a registration certificate or registry identification card pursuant to this chapter;

(2) Notify law enforcement of an apparent criminal violation of this chapter or respond to law enforcement or prosecutorial officials engaged in the investigation or enforcement of the criminal provisions of this chapter;

(3) Notify state and local law enforcement about falsified or fraudulent information submitted for the purpose of obtaining or renewing a registry identification card;

(4) Notify the applicable licensing board if there is reason to believe that a

practitioner ~~provided a written certification and the department has reason to believe the practitioner otherwise~~ has violated the standard of care for evaluating a medical condition; or respond to the board, if the board is seeking data relevant to an investigation of a person who holds a license issued by the board;

(5) Any judicial authority under grand jury subpoena or court order or equivalent judicial process for investigation of criminal, civil, or administrative violations related to the use of medical cannabis;

(6) An authorized employee of the department performing official duties associated with the medical cannabis program; ~~or~~

(7) A practitioner to determine if a person in the practitioner's care engages in the medical use of cannabis so the practitioner may assess possible drug interactions or assess other medically necessary concerns; or

(8) Comply with the reporting requirement in section 11 of this Act.

Section 11. That chapter 34-20G be amended with a NEW SECTION:

The department shall submit the name and date of birth of a qualifying patient who receives a registry identification card to the prescription drug monitoring program authorized pursuant to chapter 34-20E.

Section 12. That § 34-20E-2 be AMENDED:

34-20E-2. The board shall establish and maintain a prescription drug monitoring program to monitor the prescribing and dispensing of all controlled substances. The program shall utilize a central repository, to which each dispenser shall submit, by electronic means, information regarding each prescription dispensed for a controlled substance. The information submitted for each prescription ~~shall~~ must include specifically identified data elements adopted by the board and contained in the 2011 version of the electronic reporting standard for prescription monitoring programs, version 4.2 of the American Society for Automation in Pharmacy.

The program must include the names of qualifying patients who receive a registry identification card, as defined in § 34-20G-1, submitted by the Department of Health.

Signed March 4, 2024

Chapter 133

(Senate Bill 10)

An Act to require that a notification of medical cannabis certification be provided to a patient's primary or referring practitioner.

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

Section 1. That chapter 34-20G be amended with a NEW SECTION:

If a practitioner issues a written certification under this chapter, and if the practitioner is neither the patient's primary care provider nor a specialty provider caring for the patient's debilitating medical condition, the practitioner shall, upon

issuing the certification, provide electronic notification of the issuance:

(1) To the patient's primary care provider; or

(2) To the referring practitioner, if that individual is caring for the patient's debilitating medical condition.

The patient's primary care provider or the referring practitioner shall include any notification received in accordance with this section in the patient's medical file.

Signed March 6, 2024

Chapter 134

(Senate Bill 71)

An Act to remove a prohibition on the ability of law enforcement and various governmental entities to inspect, search, seize, prosecute, or impose disciplinary action on cannabis dispensaries, cultivation facilities, manufacturing facilities, and testing facilities.

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

Section 1. That § 34-20G-8 be REPEALED:

~~No dispensary or a dispensary agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner; or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:~~

~~(1) Possess, transport, or store cannabis or cannabis products;~~

~~(2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;~~

~~(3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;~~

~~(4) Purchase or otherwise acquire cannabis from a cultivation facility or dispensary, and cannabis products from cannabis product manufacturing facility or dispensary; and~~

~~(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cardholder, nonresident cardholder, or dispensary.~~

Section 2. That § 34-20G-9 be REPEALED:

~~No cultivation facility or a cultivation facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:~~

~~(1) Possess, plant, propagate, cultivate, grow, harvest, produce, process, manufacture, compound, convert, prepare, pack, repack, or store cannabis;~~

~~(2) Deliver, transfer, or transport cannabis to a testing facility and compensate a testing facility for services provided;~~

~~(3) Accept cannabis offered by a cardholder or nonresident cardholder if nothing of value is exchanged in return;~~

~~(4) Purchase or otherwise acquire cannabis from a cultivation facility;~~

~~(5) Purchase cannabis seeds from a cardholder, nonresident cardholder, or the equivalent of a medical cannabis establishment that is registered in another jurisdiction; or~~

~~(6) Deliver, sell, supply, transfer, or transport cannabis, cannabis paraphernalia, or related supplies or educational materials to a cultivation facility and dispensary.~~

Section 3. That § 34-20G-10 be REPEALED:

~~No cannabis product manufacturing facility or a cannabis product manufacturing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty of any kind, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:~~

~~(1) Purchase or otherwise acquire cannabis from cultivation facility, and cannabis products or cannabis from a cannabis product manufacturing facility;~~

~~(2) Possess, produce, process, manufacture, compound, convert, prepare, pack, repack, and store cannabis or cannabis products;~~

~~(3) Deliver, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a dispensary or cannabis product manufacturing facility;~~

~~(4) Deliver, transfer, or transport cannabis to testing facility and compensate testing facility for services provided; or~~

~~(5) Deliver, sell, supply, transfer, or transport cannabis, cannabis products, cannabis paraphernalia, or related supplies or educational materials to a cannabis product manufacturing facility or dispensary.~~

Section 4. That § 34-20G-11 be REPEALED:

~~No testing facility or testing facility agent is subject to prosecution, search, or inspection, except by the department pursuant to § 34-20G-69, seizure, or penalty in any manner, or may be denied any right or privilege, including civil penalty or disciplinary action by a court or business licensing board or entity, for acting in accordance with this chapter to:~~

~~(1) Acquire, possess, transport, and store cannabis or cannabis products obtained from a cardholder, nonresident cardholder or medical cannabis establishment;~~

~~(2) Return the cannabis or cannabis products to a cardholder, nonresident cardholder, or medical cannabis establishment from whom it was obtained;~~

~~(3) Test cannabis, including for potency, pesticides, mold, or contaminants; or~~

~~(4) Receive compensation for services under this section.~~

Section 5. That § 34-20G-16 be REPEALED:

~~No law enforcement officer employed by an agency that receives state or local government funds may expend any state or local resources, including the officer's time, to effect any arrest or seizure of cannabis, or conduct any investigation, on the sole basis of activity the officer believes to constitute a violation of the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., if the officer has reason to believe that the activity is in compliance with this chapter. No officer may expend any state or local resources, including the officer's time, to provide any information or logistical support related to any activity to any federal law enforcement authority or prosecuting entity.~~

Signed March 18, 2024

Chapter 135

(Senate Bill 12)

An Act to authorize certain employer actions regarding the use of cannabis by an employee or a prospective employee.

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

Section 1. That § 34-20G-22 be AMENDED:

34-20G-22. Except as otherwise provided in this chapter, a registered qualifying patient who uses cannabis for a medical purpose ~~shall~~ must be afforded ~~all~~ the same rights under state and local law, as the person would be afforded if the person were solely prescribed a pharmaceutical medication, as it pertains to:

(1) Any interaction with a person's employer;

(2) Drug testing by a person's employer; or

(3) Drug testing required by any state or local law, agency, or government official.

Nothing in this section prohibits adverse employment action, based solely on a positive test result for cannabis metabolites, if the person is employed in a safety-sensitive job.

Nothing in this section prohibits an employer from refusing to hire a person, based solely on a positive test result for cannabis metabolites, if the person is seeking employment in a safety-sensitive job.

Section 2. That § 34-20G-24 be AMENDED:

34-20G-24. No employer is required to allow the ingestion, possession, transfer, display, or transportation of cannabis in any workplace or to allow any employee to work while under the influence of cannabis.

No employer is prohibited from establishing and enforcing a ~~drug-free~~ drug-free workplace policy ~~that~~, which may include a drug testing program that

complies with state and federal law ~~and~~, or acting with respect to an applicant or employee under the policy.

No cause of action is created for employment discrimination or wrongful termination arising from an employer's enforcement of a drug-free workplace policy in compliance with this chapter.

Signed February 14, 2024

Chapter 136

(House Bill 1024)

An Act to require that an application for a medical marijuana registry identification card include a notice of federal law regarding firearms and the unlawful use of a controlled substance.

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

Section 1. That chapter 34-20G be amended with a NEW SECTION:

Each application for a registry identification card and each application for a card renewal must include a notice that:

(1) The Gun Control Act of 1968, 18 U.S.C. § 922 (January 1, 2024), prohibits any person who is an unlawful user of or addicted to any controlled substance, as defined by the Controlled Substances Act of 1970, 21 U.S.C. § 801, et seq., (January 1, 2024), from shipping, transporting, receiving, or possessing a firearm or ammunition;

(2) Until marijuana is legalized under federal law, an individual who is a current user of marijuana is, under federal law, an unlawful user of a controlled substance; and

(3) Federal law does not exempt the use of marijuana for medicinal purposes.

Section 2. That § 34-20G-72 be AMENDED:

34-20G-72. The department shall promulgate rules, pursuant to chapter 1-26:

(1) Establishing the form and content of registration and renewal applications submitted under this chapter and include the notice requirements set forth in section 1 of this Act;

(2) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:

(a) The preference of the local government;

(b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;

(c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and

(d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to

maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;

(3) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;

(4) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

(a) Oversight requirements;

(b) Record-keeping requirements;

(c) Security requirements, including lighting, physical security, and alarm requirements;

(d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;

(e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;

(f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;

(g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;

(h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;

(i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;

(j) Requirements and procedures for the safe and accurate packaging, labeling, distribution, and tracking of medical cannabis;

(k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel; and

(l) Requirements for samples of cannabis and cannabis products submitted to testing facilities, including batch sizes to not exceed fifty pounds of cannabis intended for retail sale, batch sizes for homogenous cannabis products intended for retail sale, and procedures to ensure representative sampling;

(5) Establishing procedures for suspending or terminating the registration certificates or registry identification cards of cardholders and medical cannabis establishments that commit multiple or serious violations of this chapter;

(6) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:

(a) The length of time it typically takes for a product to take effect;

(b) Disclosing ingredients and possible allergens;

(c) A nutritional fact panel; and

(d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

(7) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:

(a) A practitioner's statement confirming that the patient has a debilitating medical condition; and

(b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;

(8) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and

(9) Establishing reasonable application and renewal fees for registry identification cards and registration certificates, according to the following:

(a) Application fees for medical cannabis establishments may not exceed five thousand dollars, with this upper limit adjusted annually for inflation;

(b) The total fees collected shall generate revenues sufficient to offset all expenses of implementing and administering this chapter;

(c) A sliding scale of patient application and renewal fees based upon a qualifying patient's household income;

(d) The fees charged to qualifying patients, nonresident cardholders, and caregivers shall be no greater than the costs of processing the application and issuing a registry identification card or registration; and

(e) The department may accept donations from private sources to reduce application and renewal fees.

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 misdemeanor.

Signed February 12, 2024

Chapter 137

(Senate Bill 219)

An Act to modify provisions related to the control of counties and municipalities over medical marijuana establishments within their jurisdictions.

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

Section 1. That § 34-20G-56 be AMENDED:

34-20G-56. If ~~a local government~~ the governing body of a county has enacted a numerical limit on the number of medical cannabis establishments in the ~~locality~~ county and a greater number of applicants seek registration, the department shall solicit and consider input from the ~~local government~~ county as to its preference for registration.

If the governing body of a municipality has enacted a numerical limit on the number of medical cannabis establishments in the municipality, and a greater number of applicants seek registration, the department shall solicit and consider input from the municipality as to its preference for registration.

Section 2. That § 34-20G-58 be AMENDED:

34-20G-58. ~~A local government~~The governing body of a municipality may enact an ordinance not in conflict with this chapter, ~~governing the~~ regardless of whether it has enacted a zoning ordinance pursuant to title 11, imposing:

(1) Restrictions on a medical cannabis establishment to govern the time, place, and manner~~, and number~~ of operation;

(2) A limit on the number of medical cannabis establishments in the ~~locality~~ municipality;

(3) Reasonable setback requirements;

(4) Limitations on the proximity of a medical cannabis establishment to:

(a) Any sensitive land-use area, including a childcare facility, park, public service facility, recreational facility, religious facility, school, and any location frequented by individuals under the age of twenty-one; or

(b) Any other medical cannabis establishment;

(5) Requirements for a medical cannabis establishment to obtain a local license, permit, or registration to operate; or

(6) Reasonable fees for any local license, permit, or registration.

The governing body of a county may enact an ordinance governing all matters set forth in this section. The county ordinance applies throughout its jurisdiction, except within the boundaries of a municipality that has enacted an ordinance in accordance with this section.

A ~~local government~~ county or municipality may ~~establish~~ impose a civil ~~penalties~~ penalty for the violation of an ordinance ~~governing the time, place, and manner of a medical cannabis establishment that may operate in the locality~~ enacted in accordance with this section.

Section 3. That § 34-20G-59 be AMENDED:

34-20G-59. No ~~local government~~ county or municipality may prohibit a dispensary, either expressly or through the enactment of an ordinance that makes the operation of the dispensary impracticable in the ~~jurisdiction~~ county or municipality.

Section 4. That § 34-20G-58.1 be REPEALED.

~~For purposes of this chapter, any municipality that has not enacted a zoning ordinance pursuant to title 11 governing the location of medical cannabis establishments may enact an ordinance to regulate the place of operation of any~~

~~cannabis-related establishment under this section.~~

~~A municipality may prohibit the location of a medical cannabis establishment in an area in a sensitive land use area and may establish reasonable setbacks. For purposes of this section, a sensitive land use area includes churches, schools, day cares, public service and recreation facilities, places frequented by people under age twenty-one, and parks.~~

~~A municipality may require a minimum distance between cannabis-related establishments.~~

Section 5. That § 34-20G-60 be REPEALED.

~~A local government may require a medical cannabis establishment to obtain a local license, permit, or registration to operate, and may charge a reasonable fee for the local license, permit, or registration.~~

Signed March 14, 2024

Chapter 138
(Senate Bill 43)

An Act to establish procedures for the imposition of fines and probation against medical cannabis establishments, increase the allowable fee for a medical cannabis establishment registration certificate, and direct the Department of Health to promulgate rules to increase the fee for a registration certificate.

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

Section 1. That § 34-20G-72 be AMENDED:

34-20G-72. The department shall promulgate rules pursuant to chapter 1-26:

(1) Establishing the form and content of registration and renewal applications submitted under this chapter;

(2) Establishing a system to numerically score competing medical cannabis establishment applicants, in cases where more applicants apply than are allowed by the local government, that includes analysis of:

(a) The preference of the local government;

(b) In the case of dispensaries, the suitability of the proposed location and its accessibility for patients;

(c) The character, veracity, background, qualifications, and relevant experience of principal officers and board members; and

(d) The business plan proposed by the applicant, that in the case of a cultivation facility or dispensary shall include the ability to maintain an adequate supply of cannabis, plans to ensure safety and security of patrons and the community, procedures to be used to prevent diversion, and any plan for making cannabis available to low-income registered qualifying patients;

(3) Governing the manner in which the department shall consider applications for and renewals of registry identification cards, that may include creating a standardized written certification form;

(4) Governing medical cannabis establishments to ensure the health and safety of qualifying patients and prevent diversion and theft without imposing an undue burden or compromising the confidentiality of a cardholder, including:

(a) Oversight requirements;

(b) Record-keeping requirements;

(c) Security requirements, including lighting, physical security, and alarm requirements;

(d) Health and safety regulations, including restrictions on the use of pesticides that are injurious to human health;

(e) Standards for the manufacture of cannabis products and both the indoor and outdoor cultivation of cannabis by a cultivation facility;

(f) Requirements for the transportation and storage of cannabis by a medical cannabis establishment;

(g) Employment and training requirements, including requiring that each medical cannabis establishment create an identification badge for each agent;

(h) Standards for the safe manufacture of cannabis products, including extracts and concentrates;

(i) Restrictions on the advertising, signage, and display of medical cannabis, provided that the restrictions may not prevent appropriate signs on the property of a dispensary, listings in business directories including phone books, listings in marijuana-related or medical publications, or the sponsorship of health or not-for-profit charity or advocacy events;

(j) Requirements and procedures for the safe and accurate packaging, labeling, distribution, and tracking of medical cannabis;

(k) Certification standards for testing facilities, including requirements for equipment and qualifications for personnel; and

(l) Requirements for samples of cannabis and cannabis products submitted to testing facilities, including batch sizes to not exceed fifty pounds of cannabis intended for retail sale, batch sizes for homogenous cannabis products intended for retail sale, and procedures to ensure representative sampling;

(5) Establishing procedures for ~~suspending or terminating the registration certificates or~~ the suspension and termination of the registry identification cards of cardholders ~~and medical cannabis establishments that~~ who commit multiple or serious violations of this chapter;

(6) Establishing procedures for:

(a) The imposition of fines, not to exceed ten thousand dollars per inspection, on a medical cannabis establishment that is found to have committed multiple or serious violations of this chapter; and

(b) The probation, suspension, and termination of the registration certificate of a medical cannabis establishment that commits multiple or serious violations of this chapter;

(7) Establishing labeling requirements for cannabis and cannabis products, including requiring cannabis product labels to include the following:

(a) The length of time it typically takes for a product to take effect;

(b) Disclosing ingredients and possible allergens;

(c) A nutritional fact panel; and

(d) Requiring that edible cannabis products be clearly identifiable, when practicable, with a standard symbol indicating that it contains cannabis;

~~(7)~~(8) Establishing procedures for the registration of nonresident cardholders and the cardholder's designation of no more than two dispensaries, which shall require the submission of:

(a) A practitioner's statement confirming that the patient has a debilitating medical condition; and

(b) Documentation demonstrating that the nonresident cardholder is allowed to possess cannabis or cannabis preparations in the jurisdiction where the nonresident cardholder resides;

~~(8)~~(9) Establishing the amount of cannabis products, including the amount of concentrated cannabis, each cardholder and nonresident cardholder may possess; and

~~(9)~~(10) Establishing~~ reasonable~~ application and renewal fees for~~ registry identification cards and~~ registration certificates,~~ according to the following:~~

~~(a) Application fees for medical cannabis establishments may~~ not to exceed~~ five~~ twenty thousand dollars, with this upper limit adjusted annually for inflation~~;~~

~~(b) The~~, with the total fees collected~~ shall generate revenues~~ sufficient to offset all~~ expenses of implementing and administering this chapter~~ costs related to program implementation and administration; and

~~(c) A~~

(11) Establishing application and renewal fees for registry identification cards and nonresident cardholder registration as follows:

(a) Using a sliding scale of patient application and renewal fees based upon a qualifying patient's household income;

~~(d)~~(b) The fees charged to qualifying patients, nonresident cardholders, and caregivers~~ shall~~ may not be~~ no~~ greater than the costs of processing the application and issuing a registry identification card or registration; and

~~(e)~~(c) The department may accept donations from private sources to reduce application and renewal fees.

A violation of a required or prohibited action under any rule authorized by this section is a Class 2 misdemeanor.

Section 2. The Department of Health shall amend the following Administrative Rules of South Dakota, to be filed with the secretary of state no later than September 30, 2024, utilizing the permanent rulemaking procedure in chapter 1-26:

44:90:03:17. **Fees for registration certificates -- Application and renewal.** The department shall collect a non-refundable fee for an initial or renewal application for an establishment registration certificate of ~~five~~ nine thousand ~~three hundred and ten~~ dollars.

Signed March 14, 2024

Chapter 139

(Senate Bill 11)

An Act to prohibit a practitioner from referring a patient to a medical cannabis clinic with which the practitioner or an immediate family member has a financial relationship and to provide a penalty therefor.

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

Section 1. That chapter 34-20G be amended with a NEW SECTION:

If a practitioner or an immediate family member of the practitioner has a financial relationship with a medical cannabis clinic, the practitioner may not knowingly refer a patient to that clinic for the purpose of receiving a written certification under this chapter.

For purposes of this section, a "financial relationship" means an ownership or investment interest in the medical cannabis clinic, or a compensation arrangement between the practitioner or the practitioner's immediate family member and the clinic.

An ownership or investment interest may be through equity, debt, or other means and includes an interest in an entity that holds an ownership or investment interest in the medical cannabis clinic.

The prohibition of this section does not apply:

(1) If the services offered at the medical cannabis clinic are being provided by another practitioner in the same group practice as the referring practitioner;

(2) To a compensation arrangement, between the practitioner or the practitioner's immediate family member and the medical cannabis clinic, consisting of payments under the terms of a written lease that:

(a) Is signed by all the parties;

(b) Specifies the premises covered by the lease, provided the premises do not exceed the space that is reasonable and necessary for the legitimate business purposes of the lease and further provided that the premises, aside from common areas, are used exclusively by the lessee;

(c) Has a duration of at least twelve months; and

(d) Specifies the rental charges over the term of the lease, provided

the charges are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties;

(3) To a bona fide employment relationship under which an immediate family member of the practitioner is employed by the clinic for identifiable services, and receives remuneration for those services in an amount that:

(a) Is consistent with the fair market value of the services; and

(b) Is not determined in a manner that takes into account, directly or indirectly, the volume or value of any referrals by the referring practitioner; and

(4) To an isolated transaction, such as a one-time sale of property.

Any practitioner who knowingly refers a patient to a medical cannabis clinic, with which the practitioner or an immediate family member of the practitioner has a financial relationship, is guilty of a Class 2 misdemeanor.

Signed February 27, 2024

Chapter 140

(Senate Bill 191)

An Act to restrict the use of medical cannabis for individuals on probation or conditional release.

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

Section 1. That a NEW SECTION be added to chapter 34-20G:

In order for an individual who is serving a probationary sentence under the supervision of the Unified Judicial System or who is on conditional release or parole from a state correctional facility under the legal custody of the Department of Corrections to utilize medical cannabis, the individual's practitioner must attest that the use of medical cannabis is:

(1) Consistent with the medical standard of care for the treatment of the individual’s documented debilitating medical condition and any symptoms associated with the debilitating medical condition;

(2) Reasonable in light of the practitioner’s observation and the individual's physical examination, diagnostic test results, medical history, and reported symptoms; and

(3) Reasonable in light of the risks and benefits of medical cannabis as compared to the risks and benefits of other treatment options for the individual’s debilitating medical condition and any symptoms associated with the debilitating medical condition.

Signed March 14, 2024

Chapter 141
(House Bill 1071)

An Act to revise a provision providing authority to the Governor to enter into agreements with the Nuclear Regulatory Commission.

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

Section 1. That § 34-21-3 be AMENDED:

34-21-3. The Governor, on behalf of this state, is authorized to enter into agreements with the~~ federal government~~ United States Nuclear Regulatory Commission providing for the discontinuance of certain~~ of the federal government's responsibilities with respect to sources of radiation~~ regulatory authority of the Commission and the assumption thereof by this state, as provided for in 42 U.S.C. § 2021(b) (August 8, 2005). This authority~~ for the Governor to enter into an agreement with the environmental protection agency~~ is granted only under the condition that~~ funds~~ moneys are made available for the establishment of an adequate radiation protection program~~ within the agency~~ prior to the signing of this agreement.

Signed March 6, 2024

Chapter 142
(House Bill 1224)

An Act to require the creation of an informational video and other materials describing the state's abortion law and medical care for a pregnant woman experiencing life-threatening or health-threatening medical conditions.

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

Section 1. That a NEW SECTION be added to chapter 34-23A:

On or before September 1, 2024, the Department of Health shall create a video and other materials that describe:

(1) The state's abortion law and acts that do and do not constitute an abortion;

(2) The most common medical conditions that threaten the life or health of a pregnant woman;

(3) The generally accepted standards of care applicable to the treatment of a pregnant woman experiencing life-threatening or health-threatening medical conditions; and

(4) The criteria that a practitioner, exercising reasonable medical judgment, might use in determining the best course of treatment for a pregnant woman experiencing life-threatening or health-threatening medical conditions and for her unborn child.

In creating the video and other materials described in this section, the department shall consult with the attorney general and stakeholders having

medical and legal expertise. Upon completion, the department shall make the video and materials available on its website.

Signed March 18, 2024

Chapter 143

(House Bill 1098)

An Act to provide free birth certificates to persons experiencing homelessness.

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

Section 1. That chapter 34-25 be amended with a NEW SECTION:

Notwithstanding § 34-25-52, the department must provide, at no cost, a certified copy of a person's South Dakota birth certificate, limited to one, upon application and proof of that person's homelessness. The person or the person's spouse, child, parent, guardian, next of kin, or authorized representative may apply for a certified copy of the person's birth certificate pursuant to this section.

An affidavit developed by the department attesting to the person's housing status is proof of homelessness for the purposes of this section. The department may not accept an affidavit as proof of homelessness unless signed by the person experiencing homelessness and a homeless services provider with knowledge of the person's housing status.

For the purposes of this section, the term "homeless services provider" means any government or nonprofit agency that provides a food bank, homeless shelter, housing assistance program, homeless outreach or advocacy program, or any similar program; any human services or social services agency, public or private, providing health services, behavioral health services, substance use disorder services, or employment or public assistance services to homeless persons; or any law enforcement officer designated as a liaison to the homeless population by a local police department or sheriff's department.

Signed March 18, 2024

Chapter 144

(House Bill 1092)

An Act to revise provisions regarding the 911 emergency surcharge.

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

Section 1. That § 34-45-4 be AMENDED:

34-45-4. A monthly uniform 911 emergency surcharge of ~~one dollar and twenty-five cents shall be~~ two dollars must be assessed per service user line. The proceeds of the 911 emergency surcharge ~~shall~~ must be used to pay for allowable nonrecurring and recurring costs of the 911 system. No 911 emergency surcharge may be imposed upon more than one hundred service user lines or equivalent

service, per customer account billed, per month. In the case of multi-station network systems, the service user lines ~~shall be~~ are equal to the number of calls that can simultaneously be made from the system to the public switched telephone network. No prepaid wireless telecommunications service is subject to the 911 emergency surcharge imposed under this section.

Section 2. That a NEW SECTION be added to chapter 34-45:

Each governing body of a public safety answering point shall submit an annual report to the board by July thirty-first of each year. The report must cover the period of July first through July first immediately preceding the report deadline and be available for public inspection. The annual report for each answering point must include the following:

(1) Number of unique service calls made for ambulance, fire, and law enforcement;

(2) Total number of employees;

(3) Operational budget;

(4) Total amount of dollars received by the 911 emergency surcharge pursuant to § 34-45-4 from each jurisdiction in the system;

(5) Description of the geographic territory of the public safety answering point; and

(6) Hours of operation for the public safety answering point.

The Department of Public Safety may promulgate rules, pursuant to chapter 1-26, to require additional information from a public safety answering point for the purposes of the annual report.

Section 3. That § 34-45-20 be AMENDED:

34-45-20. The board shall:

(1) Evaluate all of the current public safety answering points and systems throughout the State of South Dakota for their capability to adequately and efficiently administer systems;

(2) Develop plans for the implementation for a uniform statewide 911 system covering the entire state or so much as is practicable;

(3) Monitor the number and location of public safety answering points or systems and the use of 911 emergency surcharge funds in their administrative and operational budgets;

(4) Develop criteria and minimum standards for operating and financing public safety answering points or systems;

(5) Develop criteria for the eligibility and amount of reimbursement of recurring and nonrecurring costs of public safety answering points or systems;

(6) Develop criteria for the implementation of performance audits of the use of the 911 fees utilized in the operation of the 911 system. The audit shall be conducted by the Department of Legislative Audit and shall be presented to the board and the Legislature;

(7) Report annually by August thirty-first to the Government Operations and Audit Committee about the operations and findings of the board, an assessment of operational efficiencies of each public safety answering

point, and any recommendations for changes in the surcharges imposed by this chapter and the distribution of the revenue; and

(8) Report annually to the Governor and the Legislature about the operations and findings of the board and any recommendations for changes to 911 service in the state.

Section 4. Section 1 of this Act expires on July 1, 2026.

Signed March 18, 2024

ENVIRONMENTAL PROTECTION

Chapter 145
(House Bill 1030)

An Act to update statutory and regulatory references pertaining to water pollution.

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

Section 1. That § 34A-2-93 be AMENDED:

34A-2-93. The board may promulgate rules pursuant to chapter 1-26:

(1) To establish surface and ground water quality standards;

(2) To establish design and installation requirements for on-site wastewater systems;

(3) To establish criteria for water pollution control facilities, to include facilities constructed for the protection and monitoring of groundwater;

(4) To establish the present and future beneficial uses of all waters under this chapter;

(5) To establish procedures for granting variances from water quality standards;

(6) To establish procedures for conducting inspections;

(7) To establish contested case procedures;

(8) To establish secondary treatment standards for wastewater facilities;

(9) To establish standards for surface water discharge permits;

(10) To establish pretreatment standards and requirements for local pretreatment programs;

(11) To establish standards for aboveground and underground storage tanks;

(12) To establish financial responsibility requirements for owners of underground and aboveground storage tanks;

(13) To establish standards for the remediation and cleanup of contaminated soils. The standards relating to cleanup of petroleum contamination ~~shall~~

must be based upon risk to human health and safety, as determined by the board. The board may adopt standards relating to cleanup of contamination, consistent with the American Society for Testing and Materials Standard ~~ES38-94, entitled Emergency~~ E1739-95R15, Standard Guide for ~~Risk-Based~~ Risk-Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, ~~2011~~ 2024, or other generally accepted risk-based cleanup methods;

(14) To establish standards for bulk chemical storage facilities;

(15) To establish requirements for underground injection control;

(16) To establish a groundwater discharge permit program;

(17) To establish a delegated national pollutant discharge elimination system program, as provided for under 40 ~~CFR~~ C.F.R. Part 123 ~~as amended to~~ (January 1, ~~2011~~, 2024) and wastewater pretreatment program, as provided for under 40 ~~CFR~~ C.F.R. Part 403 ~~as amended to~~ (January 1, ~~2011~~ 2024);

(18) To establish a priority listing for projects funded under the construction grant program; and

(19) To establish requirements for approval of plans for water pollution control facilities and water supply systems.

The board shall ~~also~~ hold any hearings necessary for the proper administration of this chapter and initiate any action in court for the enforcement of this chapter.

Section 2. That § 34A-2-98 be AMENDED:

34A-2-98. Terms used in this section and § 34A-2-99 mean:

(1) "Department," Department of Agriculture and Natural Resources;

(2) "Local designated agencies," agencies of subdivisions of state government which are designated by the Governor to carry out specific portions of this section and § 34A-2-99;

(3) "Nonoperational storage tank," any underground storage tank in which regulated substances may not be deposited or from which regulated substances may not be dispensed;

(4) "Regulated substance," any substance defined in ~~section 101(4) of~~ the ~~Federal~~ Comprehensive Environmental Response, Compensation, and Liability Act of 1980, ~~as amended to January 1, 2011~~ 42 U.S.C. § 9601(14) (January 1, 2024), but not including any substance regulated as a hazardous waste under subtitle (C), and petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure, 60 degrees ~~fahrenheit~~ Fahrenheit and 14.7 pounds per square inch absolute; and

(5) "Underground storage tank," any tank or combination of tanks, including connected underground pipes, which contains an accumulation of regulated substances, and the volume of which, including the volume of the connected underground pipes, is ten percent or more beneath the surface of the ground. This term does not include:

(a) A farm or residential tank with a capacity of one thousand one hundred gallons or less used for storing motor fuel for noncommercial purposes;

(b) A tank used for storing heating oil for consumptive use on the premises where stored;

(c) A septic tank;

(d) A pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, ~~as amended to January 1, 2011~~ 49 U.S.C. § 60101 et seq. (January 1, 2024), the Hazardous Liquid Pipeline Safety Act of 1979, ~~as amended to January 1, 2011~~ 49 U.S.C. § 60101 et seq. (January 1, 2024), or a pipeline which is an intrastate pipeline facility regulated under state laws comparable to the provisions of law referred to above;

(e) A surface impoundment, pit, pond or lagoon;

(f) A storm water or wastewater collection system;

(g) A flow-through process tank;

(h) A liquid trap or associated gathering lines directly related to oil or gas production and gathering operations;

(i) A storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor; and

(j) Any pipes connected to any tank ~~which is~~ described in subsections (a) to (i), inclusive, of this subdivision.

Section 3. That § 34A-2-99 be AMENDED:

34A-2-99. The board shall promulgate rules, pursuant to chapter 1-26, to develop:

(1) Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system or tank testing system;

(3) Requirements for the reporting of any releases and corrective action taken in response to a release from an underground storage tank;

(4) Requirements for taking corrective action in response to a release from an underground storage tank. The standards relating to cleanup of petroleum contamination ~~shall~~ must be based upon risk to human health and safety as determined by the board. The board may adopt standards relating to cleanup of contamination consistent with the American Society for Testing and Materials Standard ~~ES38-94, entitled Emergency~~ E1739-95R15, Standard Guide for ~~Risk-Based~~ Risk-Based Corrective Action Applied at Petroleum Release Sites, as in effect on January 1, ~~2011~~ 2024, or other generally accepted risk-based cleanup methods;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank;

(7) Standards of performance for new underground storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational underground storage tank;

(9) Requirements for providing the information required on the form issued pursuant to ~~section 9002(b)(2) of the Federal Resource Conservation Recovery Act reauthorization of 1984, as amended to January 1, 2011~~ the Regulation of Underground Storage Tanks, 42 U.S.C. § 6991a(b)(2) (January 1, 2024).

A violation of rules promulgated pursuant to this section is subject to § 34A-2-75.

Section 4. That § 34A-2-100 be AMENDED:

34A-2-100. The term, above ground stationary storage tank, as used in this section and §§ 34A-2-101 and 34A-2-102 means any stationary tank or combination of stationary tanks above ground, including connected pipes, which stores an accumulation of regulated substances as defined in § 34A-2-98.

This term does not include:

(1) Any farm or residential tank used for storing motor fuels for noncommercial purposes;

(2) Any tank used for storing heating oil or motor fuels for consumptive use on the premises where stored;

(3) Any septic tank;

(4) Any pipeline facility, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, ~~as amended to January 1, 2011~~ 49 U.S.C. § 60101 et seq. (January 1, 2024);

(5) Any surface impoundment, pit, pond, or lagoon;

(6) Any storm water or wastewater collection system;

(7) Any flow-through process tank;

(8) Any liquid trap or associated gathering lines directly related to oil and gas production and gathering operations;

(9) Any storage tank situated in an underground area such as a basement, cellar, mineworking, drift, shaft, or tunnel if the storage tank is situated upon or above the surface of the floor;

(10) Any pipes connected to any tank which is exempted in this subdivision; and

(11) Any tanks used for storing pesticides regulated under chapter 38-21, except those regulated pursuant to Subtitle I of the ~~Federal~~ Hazardous and Solid Waste Amendments of 1984 ~~(Public Law 98-616), as amended to January 1, 2011~~, 42 U.S.C. 6901, et seq. (January 1, 2024).

Section 5. That § 34A-2-101 be AMENDED:

34A-2-101. The board shall promulgate rules, pursuant to chapter 1-26, to develop procedures necessary to safeguard the public health and welfare and prevent pollution of the waters of the state from the leakage, spillage, release, or discharge of regulated substances from above ground stationary storage tanks. These rules ~~shall~~ must be exercised in substantial conformity with the ~~current~~

codes and standards recommended by the National Fire Protection Association ~~for the storage of flammable and combustible liquids,~~ as contained in NFPA30 ~~in effect on January 1, 2011~~, Flammable and Combustible Liquids Code (January 1, 2024), and NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages (January 1, 2024). The rules ~~shall~~ must provide ~~the following~~:

(1) Requirements for maintaining a leak detection system, an inventory system, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(2) Requirements for maintaining records of any monitoring or leak detection system or inventory control system;

(3) Requirements for the reporting of any releases and corrective action taken in response to a release from any above ground stationary storage tank;

(4) Requirements for taking corrective action in response to a release from any above ground stationary storage tank;

(5) Requirements for the closure of tanks to prevent future releases of regulated substances to the environment;

(6) Requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating any above ground stationary storage tank;

(7) Standards of performance, including design, construction, installation, and compatibility standards for new above ground stationary storage tanks;

(8) Requirements for notifying the department or local designated agency of the existence of any operational or nonoperational above ground stationary storage tank; and

(9) Requirements for providing tank information required on the form provided by the department.

A violation of these rules is subject to § 34A-2-75.

Section 6. That § 34A-2-103 be AMENDED:

34A-2-103. The state, under various statutes, has the established authority to provide for groundwater protection and pollution control. Under this chapter, the state has initiated a groundwater protection strategy ~~, which~~ that encompasses all waters below the surface of the land in a zone of saturation. This strategy consists of a variety of programs, activities and funds established by this chapter and other related chapters. These functions include ~~but are not limited to~~ chapters 46A-1, 46A-2, and 46A-3A to 46A-3E, inclusive, which provide for the state water plan, the state conservancy district and the establishment of water development districts; chapter 45-2, which provides for geologic surveys; chapters 46-2, 46-2A, 46-5, and 46-6, which provide for the regulation of water rights, including appropriation of water, collection, preservation, and publication of data on groundwater, liability for damages to domestic and municipal wells, and regulation of drilling and construction of drinking water wells; chapter 34A-3A, which provides for the regulation of public drinking water systems; chapter 34A-2, which provides for the protection and control of pollution to the groundwater, ~~which~~ and includes groundwater discharge permits, a groundwater quality classification system, groundwater quality standards, underground storage tank and aboveground storage tank regulations, the regulation of wastewater treatment facilities, and the regulation of on-site disposal of wastewater; chapter 1-49, which provides for laboratory services related to environmental control; chapter 34A-13,

which provides for a petroleum release compensation fund; chapter 34A-12, which provides for a regulated substance response fund; chapter 34A-6, which provides for the regulation of solid waste; chapter 38-19, which provides for the regulation of the use, storage and handling of fertilizers; chapter 38-21, which provides for the regulation of the use, storage and handling of pesticides; chapter 34A-2A, which provides for the regulation of chemigation; chapter 34A-11, which provides for the regulation of hazardous wastes including special provisions for the regulation of polychlorinated ~~biphenols~~ biphenyls; chapter 45-9, which provides for the regulation of oil and gas development, including underground injection control permits; chapters 45-6B and 45-6C, which provide for the regulation of mineral exploration, development, and mine reclamation; chapter 45-6, which provides for the regulation of sand and gravel operations; and chapter 45-6D, which provides for the regulation of uranium exploration. These programs, activities, and funds are all components of the state groundwater protection strategy and are used to maintain and improve the quality of the state's groundwaters. ~~Those~~ The agencies, departments, and programs responsible for administering these and other groundwater related functions shall coordinate their activities to ~~insure~~ ensure that comprehensive groundwater protection and management is being efficiently performed. The secretary, under the supervision of the Governor, shall ~~be responsible for overseeing~~ oversee this coordination effort.

Signed February 5, 2024

Chapter 146

(Senate Bill 33)

An Act to repeal the Petroleum Release Compensation Board.

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

Section 1. That § 1-41-5 be AMENDED:

1-41-5. The Department of Agriculture and Natural Resources shall, under the direction and control of the secretary of agriculture and natural resources, perform all administrative functions except special budgetary functions (as defined in § 1-32-1) of the following boards and commissions:

(1) The American Dairy Association of South Dakota, created by chapter 40-31;

(2) The Seed Certification Board, created by chapter 38-11;

(3) The South Dakota Weed and Pest Control Commission, created by chapter 38-22;

(4) The State Fair Commission, created by chapter 1-21;

(5) The Water Management Board, created by chapter ~~1-40~~ 1-41;

(6) The Board of Certification of Water Systems Operators, created by chapter 34A-3;

(7) The South Dakota Conservancy District, created by chapter ~~1-40~~ 46A-2;

(8) ~~The Petroleum Release Compensation Board, created by chapter 34A-13;~~

~~(9)~~ The Board of Minerals and Environment, created by chapter ~~1-40~~ 1-41; and

~~(10)~~(9) The State Emergency Response Commission, created by chapter 1-50.

Notwithstanding this section, the staff director of the American Dairy Association of South Dakota ~~shall be~~ is nominated pursuant to § 40-31-2.1.

Section 2. That § 34A-13-1 be AMENDED:

34A-13-1. Terms used in this chapter mean:

(1) "Abandoned site," any release site on which none of the tanks have been used for the intentional storage of petroleum after April 1, 1988;

(2) "Asset value," with respect to valuation of amounts on deposit in or credited to any account or fund, the amount of cash on deposit in or credited to the account or fund plus the lesser of the cost or the face amount of any investments or other obligations on deposit in or credited to the account or fund;

(3) "Backfill area," the space containing the tank system and supporting material bounded by the ground surface, the sides and bottom of the pit, and the trenches into which the product lines for the tank system were placed at the time of installation;

(4) ~~"Board," the Petroleum Release Compensation Board;~~

~~(5)~~ "Corrective action," a necessary and reasonable action taken pursuant to an approved plan to minimize, contain, eliminate, remediate, mitigate or clean up, or monitor a release, including remedial emergency measures as defined in the regulated substance cleanup act, but does not include any action taken in excess of minimum environmental standards established by the department;

~~(6)~~(5) "Covered party," a responsible person, an employee of a responsible person, or any person having legal custody of a responsible person's real property;

~~(7)~~(6) "Deductible," the ten thousand dollars, or lesser amount established by the secretary of ~~transportation~~ the department, as an exclusion from reimbursable costs incurred in a corrective action;

~~(8)~~(7) "Department," the Department of Agriculture and Natural Resources;

~~(9)~~(8) "Director," the director of the petroleum release compensation fund;

~~(10)~~(9) "Petroleum marketer," any person licensed by the Department of Revenue to sell motor fuels, special fuels, or distillates of petroleum within the state;

~~(11)~~(10) "Fund," the petroleum release compensation fund;

~~(12)~~(11) "Occurrence," any release which is discovered and identified within a twelve-month period ~~of time~~ and known to have originated from a release site;

~~(13)~~(12) "Operator," any person in control of, or having responsibility for, the operation of a tank;

~~(14)~~(13) "Owner," any person who holds title to, controls, or possesses any interest in a tank. However, the term does not include a person who holds an interest in a tank solely for financial security, unless, through foreclosure or other related actions, the holder of a security interest has

taken possession or control of the tank;

~~(15)~~(14) "Person," any individual, partnership, association, public or private corporation, or other legal entity, including the United States government, an interstate commission or other body, the state, or any agency, board, bureau, office, department, or political subdivision of the state;

~~(16)~~(15) "Petroleum," gasoline, alcohol blended fuels, diesel fuels, aviation gasoline, jet fuel, fuel oil, kerosene, and burner oil. Products that are specifically excluded from this definition include naphtha, lubricating oils, motor oil, automatic transmission fluid, waste oil, crude oil, oil sludge, oil refuse, and alcohols other than those that have been denatured with gasoline and stored to be used as blended fuel grade ethanol;

~~(17)~~(16) "Reimburse," any payment made by the fund to a covered party, ~~his~~ the covered party's assignee, or a service provider for work performed or materials supplied, as part of a corrective action or third-party claim;

~~(18)~~(17) "Release," ~~is~~ any unintentional spilling, leaking, emitting, discharging, escaping, leaching, or disposing of petroleum from a tank into the environment occurring in South Dakota, but does not include discharges or designed venting allowed under adopted rules or under federal or state law or discharges arising out of war, invasion, act of a foreign enemy, hostilities, revolution, earthquake, flood, or other catastrophic disaster occurring due to nature;

~~(19)~~(18) "Release site," one continuous property, not separated or divided by a public road or other commonly held boundary, on which the tank or tanks ~~which~~ that are the source of the release are located as determined at the time of discovery of the release or as modified based upon subsequent assessment;

~~(20)~~(19) "Responsible person," any person who is an owner or operator of a tank at any time during or after a release;

~~(21)~~(20) "Service provider," any person providing a service to accomplish a corrective action, including consultants, environmental consultants, engineers, environmental engineers, contractors, excavators, landfill operators, materialmen, and any other person providing goods or services to a covered party pursuant to a written agreement;

~~(22)~~(21) "Tank," any one or a combination of containers, vessels, and enclosures, including structures and appurtenances connected to them, that is, or has been, used to contain or dispense petroleum ~~which~~ that is either stationary or attached to a motor vehicle. Any vessel or container, in order to be covered by this chapter, shall be used primarily or exclusively to contain petroleum. However, the term does not include any pipeline facilities, including gathering lines, regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. chapter 24, or the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. chapter 29, as in effect on January 1, 1988, or any tank farms if title to the petroleum has not passed to a distributor licensed in South Dakota;

~~(23)~~(22) "Tank pulling," the removal and disposal of backfill material and a tank, excluding the contents of the tank, and the removal and replacement of the surface above the backfill area; and

~~(24)~~(23) "Upgrade," any improvement to a release site, including improvements to its fixtures, surface characteristics, and drainage when compared with the site prior to the corrective action, made before, during, or after a corrective action.

Section 3. That § 34A-13-5 be AMENDED:

34A-13-5. The ~~board and the~~ department shall develop ~~jointly,~~ and adopt by rules promulgated pursuant to chapter 1-26, a response procedure for emergency and other corrective actions.

Section 4. That § 34A-13-8.2 be AMENDED:

34A-13-8.2. The ~~board~~ department may waive any percentage it deems appropriate of the deductible if the release is reported after April 1, 1990, and is discovered as a result of an action designed to bring existing equipment into compliance with environmental legal requirements as set forth in §§ 34A-2-99 and 34A-2-101.

Section 5. That § 34A-13-8.3 be AMENDED:

34A-13-8.3. Regardless of the number of releases involved, locations involved, covered parties involved, claims made, suits brought, or persons filing claims or bringing legal action, in no event may the amount of reimbursement for any release site exceed nine hundred ninety thousand dollars unless the director has determined a new occurrence has taken place and all claims for prior occurrences have been established or settled. The provisions of this chapter do not authorize the ~~board~~ department to pay any exemplary and noneconomic damages, including damages for pain, suffering, inconvenience, physical impairment, disfigurement, loss of society and companionship, hedonic damages, or punitive damages on behalf of any covered party.

Section 6. That § 34A-13-8.4 be AMENDED:

34A-13-8.4. In addition to the amounts set forth in this chapter, the ~~board~~ department shall provide the defense of third-party claims and all costs related thereto for claims of covered parties arising under this chapter, including attorneys' fees. However, the ~~board~~ department may not provide the defense of third-party claims and costs relating thereto, including attorneys' fees, if the coverage limit under this section is exhausted by judgments, settlements, or corrective action costs prior to the commencement of a civil action by the third-party claimant against the covered party.

Section 7. That § 34A-13-9 be AMENDED:

34A-13-9. A responsible person is liable for the cost of the corrective action taken by ~~the board or~~ the department, including the cost of investigating the release and administrative and legal expenses of the fund. This chapter does not create any new cause of action for damages on behalf of third parties for release of petroleum products against the fund, petroleum marketer, or covered parties. Reimbursement ~~shall~~ must be made to a covered party who qualifies pursuant to the criteria set forth in this chapter.

No reimbursement from the fund may be made to a covered party if:

(1) Corrective action has been taken in an emergency pursuant to § 34A-13-4, and the responsible person failed to report the existence of the emergency;

(2) The ~~board~~ department has taken corrective action because a responsible person could not be identified or a tank has not been registered as required by law; or

(3) The conditions of § 34A-13-8.5 have not been met.

Section 8. That § 34A-13-12.1 be AMENDED:

34A-13-12.1. The director need not exhaust administrative remedies under this chapter in order to pursue any other administrative, civil, injunctive, or criminal remedies on behalf of the fund ~~or the board~~.

Section 9. That § 34A-13-15 be AMENDED:

34A-13-15. The ~~board~~ department shall hire and provide staff to support its activities. The staff ~~shall~~ must be employees of the executive branch of state government and subject to the statutes, rules, and other conditions of employment that are applied to employees in the executive branch of state government. All necessary costs and appropriations ~~shall~~ must be paid from the inspection fees collected pursuant to this chapter. Reimbursements previously made ~~by the board~~, upon which no contested case was requested prior to January 1, 1992, are hereby ratified except to the extent the state or federal constitution may require judicial review. The ~~board~~ department may delegate to the director ~~such~~ the duties and authority necessary to complete the daily operation and administration of the fund.

Section 10. That § 34A-13-16 be AMENDED:

34A-13-16. The ~~board~~ department may adopt, pursuant to chapter 1-26, rules regarding its practices and procedures, the form and procedure for applications for compensation from the fund, procedures for investigation of claims, procedures and criteria for determining the amount and type of costs that are eligible for reimbursement from the fund, procedures for acceptable methods of payment from the fund, procedures for persons to perform services for the fund, the method and forms necessary for the collection of the fee, procedures for conducting training and testing, including standards for identifying acceptable performance on a test, of those who perform services to be reimbursed under this chapter, and other provisions necessary to carry out this chapter.

Section 11. That § 34A-13-22 be AMENDED:

34A-13-22. The fee required by § 34A-13-20 ~~shall~~ must be paid on a monthly basis by all parties subject to the fee. The ~~board~~ department shall establish, by rules promulgated pursuant to chapter 1-26, the time and method of collection, interest on past due amounts, forms and other matters necessary for the collection of the fee.

Section 12. That § 34A-13-23 be AMENDED:

34A-13-23. The ~~board~~ department may conduct audits ~~or, by agreement, have the Department of Agriculture and Natural Resources conduct audits~~ upon persons subject to the fee.

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

34A-13-25. If any party required to pay the fee fails to do so, the director ~~shall~~ must notify that party in writing that failure to pay the fee within fifteen days shall result in the suspension of all benefits under this chapter. The director shall also notify the department, by copy, of the party's failure, and the department may require additional proof of financial responsibility. If the past due fee is paid in full after benefits are suspended, the party may appeal to the ~~board~~ department for reinstatement of benefits in a contested case proceeding pursuant to chapter 1-26. The ~~board~~ secretary may deny reinstatement of benefits or grant partial or complete reinstatement of benefits. Any suspension or reinstatement undertaken by the ~~board~~ secretary upon which no judicial action has been commenced prior to January 1, 1992, is hereby ratified.

Section 14. That § 34A-13-26 be AMENDED:

34A-13-26. The requirements of chapter 1-26 govern the administration of this chapter. Any decision made by the director becomes final unless appealed to the ~~board~~ department within thirty days of the date of that decision. The ~~board~~ secretary may, upon agreement with all affected parties, waive any hearing requirements of chapter 1-26 in order to provide for summary disposition of claims.

Section 15. That § 34A-13-27 be AMENDED:

34A-13-27. Money in the fund may only be expended or obligated:

(1) To administer the petroleum release compensation program established in this chapter;

(2) For any administrative costs and costs of corrective action taken by the fund, including investigations, legal actions, consulting costs, and other necessary costs;

(3) For any costs of recovering any expenses associated with corrective actions;

(4) For training, testing, and certification of those who perform services to be reimbursed under this chapter;

(5) For any costs paid to any state agency for services;

(6) For research and studies designed to reduce releases and improve petroleum industry methods for storage and to develop information and knowledge to aid in cleanup;

(7) To carry out inspections of tanks and to certify ~~inspection persons~~ inspectors who may perform approved inspections of tanks;

(8) To purchase insurance for the purpose of limiting certain risks associated with providing fund coverage as deemed appropriate by the secretary ~~of agriculture and natural resources~~;

(9) For any service provider unless the director has determined that a conflict of interest exists between the consultant and the contractor that could affect the integrity of the cleanup activities;

(10) For rule making; and

(11) For training of ~~board members and~~ staff employed by the ~~secretary of agriculture and natural resources~~ department.

Section 16. That § 34A-13-31 be AMENDED:

34A-13-31. Reimbursement may be made from the fund only if the ~~board~~ department has determined that the costs for which reimbursement is requested were actually incurred, reasonable, and necessary as determined under rules promulgated by the ~~board~~ department according to chapter 1-26, and were for actions that did not exceed petroleum remediation requirements established by state statutes and regulations. In establishing what constitutes reasonable and necessary costs, the ~~board~~ department shall consider trade usage, local labor and material costs, local conditions and practices, experience of the fund, and shall make allowance for site specific conditions.

Any attempt by a covered party to claim reimbursement under circumstances when the covered party knew or should have known that the claimed reimbursement was not allowable under this chapter or rules promulgated hereunder authorizes the ~~board~~ department to reduce otherwise allowable claims

submitted by the covered party. Any reduction imposed under this section is equal to the amount of the ineligible claim.

Section 17. That § 34A-13-32 be AMENDED:

34A-13-32. Money in the fund is continuously appropriated to the ~~board~~ department for the purpose of making reimbursements under and for the other purposes described in this chapter. The ~~board~~ department shall annually submit its administrative budget to the Legislature for approval as provided in § 4-8-1.

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

34A-13-34. The amount of reimbursement to be paid for cleanup which was performed by a third party is not subject to legal process or attachment. The ~~board~~ department and the fund are not subject to legal process, attachment, lien, or lien foreclosure action by any persons having performed cleanup work or provided materials, supplies, or services for a cleanup project.

Section 19. That § 34A-13-40 be AMENDED:

34A-13-40. The ~~board~~ department may provide by rules, promulgated pursuant to chapter 1-26, the limits of reimbursement for corrective action and third-party claims. These limits may not exceed those set forth in § 34A-13-8.1, but may consist of any amount equal to or less than the amounts authorized for releases discovered after April 1, 1990. Any limits provided pursuant to this section ~~shall be~~ are in addition to reasonable defense costs, including attorneys' fees, for third-party claims.

Section 20. That § 34A-13-41 be AMENDED:

34A-13-41. The ~~board~~ department shall provide reimbursement to licensed petroleum marketers, and other tank owners as defined by the ~~board~~ department pursuant to rule for liability to third parties. Coverage may only be extended to tanks ~~which~~ that are regulated in §§ 34A-2-98 and 34A-2-100, excluding tanks ~~which~~ that are exempted from coverage requirements by rules promulgated pursuant to chapter 1-26 by the Board of Water Management, in any amount not to exceed nine hundred ninety thousand dollars as described in §§ 34A-13-8.1 and 34A-13-40 and set forth in §§ 34A-13-42 to 34A-13-46, inclusive.

Section 21. That § 34A-13-42 be AMENDED:

34A-13-42. Prior to providing ~~such~~ third-party reimbursement, the ~~board~~ department may promulgate rules pursuant to chapter 1-26 which state the amount of reimbursement, the terms and conditions of reimbursement, the period of reimbursement, and the tanks or occurrence covered by reimbursement.

Section 22. That § 1-47-12 be REPEALED:

~~All functions of the Petroleum Release Compensation Board under chapter 34A-13 and its functions in the former Department of Revenue and Regulation are transferred to the Department of Agriculture and Natural Resources. The secretary of the Department of Agriculture and Natural Resources shall perform the functions of the former secretary of the Department of Revenue and Regulation, relating to the Petroleum Release Compensation Fund. The petroleum release compensation fund board shall continue as an advisory board to the secretary of agriculture and natural resources on issues concerning petroleum inspection and release compensation.~~

Section 23. That § 34A-13-14 be REPEALED:

~~The Petroleum Release Compensation Board consists of five persons appointed by the Governor as follows: one with experience in insurance or claims adjusting; one with experience in banking or a finance related business; one engineer or one person with experience in a technical field; and two persons from the petroleum marketing industry. Not all members of the board may be of the same political party. The term of an appointment shall be five years. Two members shall originally be appointed for five years, two persons for four years and one person for three years.~~

~~All functions of the Petroleum Release Compensation Board under chapter 34A-13 are hereby transferred to the secretary of the Department of Agriculture and Natural Resources. The Petroleum Release Compensation Board shall continue as an advisory board to the secretary of the Department of Agriculture and Natural Resources as provided for by § 1-32-4.1, on issues concerning petroleum inspection and release compensation.~~

Section 24. That § 34A-13-48 be REPEALED:

~~The board shall endeavor to integrate private insurance as the primary or secondary risktaker. The board and insurance industry officials representing pollution coverage who have registered with the board shall meet at least annually to determine the availability, affordability, and progress made to identify potential private companies to provide insurance coverage for resident businesses or individuals for pollution coverage. A report of these findings shall be submitted by the board to the Legislature by January tenth of each year.~~

Signed February 5, 2024

ALCOHOLIC BEVERAGES

Chapter 147
(Senate Bill 148)

An Act to provide permissive authority to a governing body of a municipality or county to deny reissuance of an on-sale license not actively used.

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

Section 1. That § 35-2-5.3 be AMENDED:

35-2-5.3. ~~No licensing authority~~The governing body of a municipality or county may ~~reissue~~ deny reissuance of any on-sale license issued pursuant to subdivision 35-4-2(4), (6), or (13) to the same licensee or the licensee's transferee if the license has not been actively used by the applicant during the two years preceding the date of the current application. For purposes of this section, the term "actively used~~,~~" means ~~that the~~:

(1) The licensed premises was open to the public during regular business hours for the sale and consumption of distilled spirits for at least sixty days during the two preceding years~~. However, the~~; or

(2) The licensed premises is ~~only required to be~~ open five days per year ~~if it is~~ and open to the public during a special event that has at least twenty-five thousand visitors. ~~However, the~~

The number of licenses held by a municipality pursuant to chapter 35-3 may not be less than the total number of licenses available to be issued as of July 1, 2010.

Signed March 6, 2024

Chapter 148

(Senate Bill 86)

An Act to allow a municipality authorized to allow legal games of chance to issue additional off-sale liquor licenses to hotel-motel convention facilities.

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

Section 1. That § 35-4-11.11 be AMENDED:

35-4-11.11. In addition to the licenses provided by §§ 35-4-10, 35-4-11 and 35-4-11.2, any municipality that is authorized by chapter 42-7B to allow legal games of chance may issue up to five additional off-sale licenses to hotel-motel convention facilities and twelve additional convention facility on-sale licenses to hotel-motel convention facilities. A hotel-motel convention facility as used in this section is a facility that, in a bona fide manner, is used and kept open for the hosting of large groups of guests for compensation which has at least fifty rooms which are suitable lodging accommodations and convention facilities with seating for at least one hundred fifty persons. In a locally designated historical district, in a municipality that is authorized to conduct gaming by chapter 42-7B, any license created by this section ~~shall be~~ is available to buildings subject to rehabilitation and restored according to the U.S. Department of the Interior standards for historic preservation projects codified in 36 C.F.R. Part 67 as of January 1, 1994. ~~Such a~~ The rehabilitation project ~~shall~~ must have at least thirty rooms that are suitable lodging accommodations.

Signed March 4, 2024

Chapter 149

(House Bill 1196)

An Act to streamline the process by which an on-sale retail license holder may acquire a special event license.

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

Section 1. That § 35-4-124 be AMENDED:

35-4-124. Any municipality or county may issue:

(1) A special malt beverage retailers license in conjunction with a special

event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4), (6), or (16) in addition to any other licenses held by the special events license applicant;

(2) A special on-sale wine retailers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4), (6), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant;

(3) A special on-sale license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to § 35-4-111 or subdivision 35-4-2(4) or (6) in addition to any other licenses held by the special events license applicant;

(4) A special off-sale package wine dealers license in conjunction with a special event within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization or any licensee licensed pursuant to subdivision 35-4-2(3), (5), or (12) or any farm winery licensee in addition to any other licenses held by the special events license applicant. A special off-sale package wine dealers licensee may only sell wine manufactured by a farm winery licensee;

(5) A special off-sale package wine dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization;

(6) A special off-sale package malt beverage dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization; or

(7) A special off-sale package dealers license in conjunction with a special event, conducted pursuant to § 35-4-124.1, within the municipality or county to any civic, charitable, educational, fraternal, or veterans organization.

The municipality or county may issue a license under this section for a time not to exceed fifteen consecutive days. No public hearing is required for the issuance of a license pursuant to this section if the person applying for the license holds an on-sale alcoholic beverage license or a retail malt beverage license in the municipality or county, or holds an operating agreement for a municipal on-sale alcoholic beverage license~~, and the license is to be used in a publicly-owned facility~~. The local governing body shall establish rules to regulate and restrict the operation of the special license, including rules limiting the number of licenses that may be issued to any person within any calendar year.

Signed March 4, 2024

PROFESSIONS AND OCCUPATIONS

Chapter 150
(Senate Bill 57)

An Act to create uniform procedures for consideration of criminal histories and convictions in professional or occupational licensure.

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

Section 1. That § 36-1C-1 be AMENDED:

36-1C-1. Terms used in this chapter mean:

(1) "Administrator," the executive director, executive secretary, or other person designated as being responsible for a professional or occupational licensing's board, commission, or agency operation;

(2) "Adverse action," a final decision by an administrator or agency to deny, condition, discipline, fine, limit, suspend, revoke, refuse to renew, or otherwise withhold a license. The term does not include emergency or temporary action against an applicant or licensee;

(3) "Agency," a professional or occupational licensing board, commission, or agency set forth in title 36;

(4) "Conviction," a plea of guilty, a verdict of guilty by a jury, a finding of guilty, or a plea of nolo contendere or a similar plea which is accepted by a court;

(5) "Criminal history," any criminal conviction, sentence, or judgment against a licensee or applicant;

~~(3)~~(6) "Complaint," an allegation of a violation of the laws or rules of a professional or occupational licensing board, commission, or agency set forth in title 36;

~~(4)~~(7) "Investigative committee," one or more persons employed or contracted by a professional or occupational licensing board, commission, or agency set forth in title 36 to review and investigate complaints; and

~~(5)~~(8) "License," any certification, license, permit, or other authorization related to the practice of any profession or occupation regulated under title 36.

Section 2. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may not take adverse action against an applicant or licensee, with regard to a license as defined in § 36-1C-1, based on the individual's criminal history, except as provided in this chapter. Except as provided in section 7 of this Act, this Act supersedes any conflicting provisions for the affected profession and occupation unless otherwise stated.

An agency or administrator may take adverse action against an applicant or licensee upon proof that the applicant or licensee has been convicted of a crime for which the conviction directly relates, in the discretion of the agency or administrator, to the profession or occupation for which the license is sought or held.

To determine whether a conviction directly relates to the profession or occupation, the agency or administrator must consider:

(1) The nature and seriousness of the crime;

(2) The relationship of the crime to the purposes of regulating the profession or occupation for which the license is sought or held;

(3) The relationship of the crime to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the profession or occupation; and

(4) Any personal statement of an applicant or licensee regarding whether each crime directly relates to the profession or occupation for which the license is sought or held.

If the agency or administrator determines that the crime directly relates to the profession or occupation being licensed, the agency or administrator must also consider whether an applicant or licensee has been rehabilitated to the extent that the person no longer poses the kind of risk to the profession or occupation associated with that type of conviction.

Section 3. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may not take adverse action against an applicant or licensee based on arrest or court records which have been sealed, expunged, or pardoned. An agency or administrator may not require an applicant or licensee to disclose arrest or court records which have been sealed, expunged, or pardoned.

Section 4. That chapter 36-1C be amended with a NEW SECTION:

An agency or administrator may require an applicant to disclose on an application for licensure whether the applicant has been convicted of certain types of crimes which directly relate to the profession or occupation. An agency or administrator may require a licensee to disclose on any renewal application for licensure whether the licensee has been convicted of certain types of crimes which directly relate to the profession or occupation since the last renewal cycle. An agency or administrator may require the applicant or licensee to provide additional documentation of any conviction disclosed by the applicant or licensee. An agency or administrator may take adverse action against an applicant or licensee based on a failure to disclose a conviction as required by this section or to provide requested documentation of any conviction disclosed by the applicant or licensee.

Section 5. That chapter 36-1C be amended with a NEW SECTION:

If an agency or administrator intends to take an adverse action against an applicant based on an applicant's criminal history, as provided in this chapter, the agency or administrator must provide written notice to the applicant of the agency's or administrator's intent to take adverse action and that, unless the applicant requests a hearing in writing within twenty calendar days, the administrator may take the adverse action without a hearing. If the applicant requests a hearing, notice and a contested case hearing under § 1-26-27 are required.

If an agency or administrator intends to take an adverse action against a licensee based on the licensee's criminal history, as provided in section 2 of this Act, the administrator must comply with the complaint procedure outlined in this chapter.

During any requested hearing, the applicant or licensee shall have the right to present evidence demonstrating that the crime or crimes at issue does not directly relate to the relevant profession or occupation and any evidence of the individual's rehabilitation from the crime or crimes at issue such that the individual no longer poses the kind of risk to the profession or occupation normally associated with the type of conviction. The agency shall consider this evidence in making its determination.

The applicant or licensee shall have a right to a judicial review of the final decision pursuant to § 1-26-30.2. An applicant or licensee may waive the right to a contested case hearing as part of any final resolution of the licensure matter.

Section 6. That chapter 36-1C be amended with a NEW SECTION:

Any prospective applicant for a license may petition an agency for a declaratory ruling, as provided in §§ 36-1C-14 to 36-1C-16, inclusive, seeking a ruling on whether the applicant's criminal history would result in an adverse action against a prospective license application by the agency. In any adverse declaratory ruling, the agency may specify the length of time for which the agency considers the decision binding, if any. Any ruling issued under this section is not required to be filed with the director of the Legislative Research Council for publication in the Administrative Rules of South Dakota. The agency must retain a copy of the ruling for the length of time for which the agency considers the decision binding, if any, and the ruling must be available for inspection by the public upon request.

Section 7. That chapter 36-1C be amended with a NEW SECTION:

Nothing in this chapter may be construed to override, supersede, or invalidate any compact or agreement already in place with regard to the regulation of any profession or occupation. Nothing in this chapter may be construed to limit or change any basis for an agency or administrator, in statute or administrative rule, to take adverse action against an applicant or licensee not based on the criminal history of an applicant or licensee as provided in this chapter. Nothing in this chapter may be construed to supersede any authority for an agency to require an applicant or licensee to submit to a background check.

Signed February 7, 2024

Chapter 151

(Senate Bill 136)

An Act to expand the scope of a physician wellness program and to declare an emergency.

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

Section 1. That § 36-2A-16 be AMENDED:

36-2A-16. The term, "physician wellness program," as used in §§ 36-2A-16 to 36-2A-19, inclusive, means a program of evaluation, counseling, or other modality to address an issue related to career fatigue or wellness in a person licensed to practice medicine or osteopathy under chapter 36-4 or a physician assistant licensed under chapter 36-4A. ~~The term does not include the provision of services intended to monitor for impairment.~~

A student enrolled at the school of medicine at the University of South Dakota is eligible to participate in a physician wellness program.

Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

Chapter 152

(Senate Bill 87)

An Act to revise provisions related to the State Board of Medical and Osteopathic Examiners and its appointed professional councils.

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

Section 1. That § 36-4-1 be AMENDED:

36-4-1. The State Board of Medical and Osteopathic Examiners, hereinafter called the Board of Examiners, consists of ~~nine members to be appointed by the Governor for terms of three years~~:

(1) Nine physicians licensed in accordance with this chapter;

(2) One physician assistant licensed in accordance with chapter 36-4A;

(3) One emergency medical services personnel licensed in accordance with chapter 36-4B;

(4) One respiratory care practitioner licensed in accordance with chapter 36-4C;

(5) One nutritionist or dietician licensed in accordance with chapter 36-10B;

(6) One athletic trainer licensed in accordance with chapter 36-29;

(7) One occupational therapist or occupational therapy assistant licensed in accordance with chapter 36-31;

(8) One genetic counselor licensed in accordance with chapter 36-36; and

(9) One individual who is a representative of the public.

The Governor shall appoint each member of the board. The term of office for each member is three years. A member's term begins on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The member's term expires on October thirtieth in the third year of appointment.

No member may serve more than three consecutive, full terms. ~~However, appointment~~ An appointment to an unexpired term is not considered a full term ~~for this purpose~~. Each member shall hold office until a successor is appointed and qualified. ~~Any~~ The Governor shall appoint a new member to fill any vacancy on the board ~~shall be filled by appointment by the Governor. The board shall at all times include six doctors of medicine and one doctor of osteopathy.~~ The Governor may stagger terms to enable the board to have different terms expire each year.

~~The terms of members begin on October thirty-first of the calendar year~~

~~in which the Governor appoints the member, unless otherwise designated by the Governor. The appointee's term expires on October thirtieth in the third year of appointment.~~

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire.~~

Section 2. That § 36-4-4 be AMENDED:

36-4-4. The Board of Examiners shall hold two regular meetings each year at a time to be fixed by the board~~, but~~. The Board of Examiners may hold special meetings at such other times as necessary ~~may be held~~. All meetings ~~shall~~ must be held at ~~such~~ the place within the state as the board shall determine.

The Board of Examiners may act on matters without receiving prior communication or recommendations from any of its appointed professional councils if the board determines that action is necessary to protect public health, interest, or safety.

Section 3. That a NEW SECTION be added to chapter 36-4:

Notwithstanding any other provision of this chapter, only the nine physician members and the representative of the public referenced in § 36-4-1 may:

(1) Participate in discussion on matters related to the licensure, practice, education, continuing education, investigation, and discipline of physicians;

(2) Be present for discussion of confidential matters and have access to confidential materials related to the licensure, practice, education, continuing education, investigation, and discipline of physicians; and

(3) Act on matters related to the licensure, practice, education, continuing education, investigation, and discipline of physicians.

Section 4. That § 36-4A-3.1 be AMENDED:

36-4A-3.1. The board shall appoint a physician assistant ~~advisory committee~~ council composed of three physician assistants. ~~Each committee~~ The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board ~~shall~~ must appoint a ~~person~~ new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The ~~committee~~ council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee~~ council shall ~~assist~~:

(1) Assist the board in ~~the regulation~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of physician assistants pursuant to this chapter~~. The committee shall also make~~;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following

each council meeting. ~~The committee shall meet the requirements of chapter 1-25 regarding open meetings.~~

The board shall communicate activity on all matters relating to physician assistants with the council.

Section 5. That § 36-4B-37 be AMENDED:

36-4B-37. The board shall appoint an ~~advanced life support~~ emergency medical services personnel ~~advisory committee~~ council composed of ~~four~~ five members ~~as follows~~:

(1) One emergency medical ~~technician-intermediate/85~~ technician;

(2) One emergency medical technician-intermediate/85, emergency medical technician-intermediate/99, or advanced emergency medical technician;

(3) ~~One emergency medical technician-paramedic~~ Two paramedics; and

(4) One ~~emergency room~~ physician licensed in accordance with chapter 36-4 and trained in emergency medicine.

~~Each committee~~The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board ~~shall~~ must appoint a ~~person~~ new member to fill the unexpired term. The appointment of a ~~person~~ member to an unexpired term is not considered a full term.

The ~~committee~~ council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee~~ council shall assist the board in ~~evaluating standards of care for advanced life support personnel and the regulation~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of ~~advanced life support~~ emergency medical services personnel pursuant to this chapter. The ~~committee~~ council shall ~~also~~ make recommendations to the board regarding rules promulgated pursuant to this chapter. ~~The committee shall meet the requirements of chapter 1-25 regarding open meetings~~ The council shall submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to emergency medical services personnel with the council.

Section 6. That § 36-4C-1 be AMENDED:

36-4C-1. Terms used in this chapter mean:

(1) "Affiliate," the South Dakota affiliate of the American Association for Respiratory Care;

(2) "Board," the State Board of Medical and Osteopathic Examiners;

(3) ~~"Committee," the Respiratory Care Advisory Committee provided for in this chapter;~~"Certified respiratory therapist," a respiratory care practitioner who has successfully completed a training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who has successfully completed the entry level examination for respiratory therapists administered by the National Board for Respiratory Care, Incorporated;

(4) "Graduate respiratory care practitioner," a person who has graduated from an education and training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who is eligible to take the licensure examination required by § 36-4C-8;

(5) "Qualified medical director," ~~the~~ a physician licensed pursuant to chapter 36-4 who has a special interest and knowledge in the diagnosis and treatment of cardiopulmonary problems and is responsible for the medical direction of any inpatient or outpatient respiratory care service, department, or home care agency. ~~The medical director shall be a licensed physician pursuant to chapter 36-4 who has special interest and knowledge in the diagnosis and treatment of cardiopulmonary problems.~~ If possible, the medical director ~~shall~~ must be qualified by special training or be experienced in the management of acute and chronic respiratory disorders or both. The medical director is responsible for the quality, safety, and appropriateness of respiratory care services;

~~(5)~~(6) "Respiratory care practitioner," any person with a temporary permit or license to practice respiratory care as defined in this chapter and whose temporary permit or license is in good standing;

~~(6)~~(7) "Registered respiratory therapist," a respiratory care practitioner who has successfully completed a training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who has successfully completed the registry examination for advanced respiratory therapists administered by the National Board for Respiratory Care, Incorporated; and

~~(7) "Certified respiratory therapist," a respiratory care practitioner who has successfully completed a training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who has successfully completed the entry level examination for respiratory therapists administered by the National Board for Respiratory Care, Incorporated;~~

~~(8) "Graduate respiratory care practitioner," a person who has graduated from an education and training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care and who is eligible to take the licensure examination required by § 36-4C-8;~~

~~(9)~~(8) "Student respiratory care practitioner," a person who is enrolled in an education and training program for respiratory care practitioners ~~which~~ that is accredited by the Commission on Accreditation of Allied Health Education Programs and the Committee on Accreditation for Respiratory Care and who provides respiratory care under direct supervision of a licensed respiratory care practitioner who is on the premises where the respiratory care services are provided and who is available for immediate consultation.

Section 7. That § 36-4C-4 be AMENDED:

36-4C-4. The board shall appoint a ~~Respiratory Care Practitioners' Advisory Committee~~ respiratory care practitioners council composed of five members ~~as follows~~:

(1) Two registered respiratory therapists;

(2) Two certified respiratory therapists; and

(3) A physician licensed pursuant to chapter 36-4 who practices as a pulmonologist.

~~Each committee~~The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board shall appoint a ~~person~~ new member to fill the unexpired term. The appointment of a ~~person~~ member to an unexpired term is not considered a full term.

The ~~committee~~ council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee~~ council shall assist the board in ~~evaluating the qualifications of applicants for licensure and reviewing the examination results of applicants~~ all matters related to the licensure, practice, education, investigation, and discipline of respiratory care practitioners. The ~~committee~~ council shall ~~also~~ make recommendations to the board regarding rules promulgated pursuant to this chapter. ~~The committee shall meet the requirements of chapter 1-25 regarding open meetings~~ The council shall submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to respiratory care practitioners with the council.

Section 8. That § 36-4C-9 be AMENDED:

36-4C-9. Any applicant ~~applying~~ for a license as a respiratory care practitioner shall file a written application, on a form provided by the board, ~~showing~~ containing evidence satisfactory to the board for showing that the applicant ~~meets the following requirements~~:

(1) ~~Character. Applicant shall be~~Is of good moral character;

(2) ~~Education. Applicant shall present evidence satisfactory to the board of having~~Has successfully completed an education and training program accredited by the Commission on Accreditation of Allied Health Education Programs in collaboration with the Committee on Accreditation for Respiratory Care; and

(3) ~~Examination. An applicant for licensure as a respiratory care practitioner shall pass~~Will pass an examination recommended by the ~~Respiratory Care Advisory Committee~~ respiratory care practitioners council and approved by the board.

Section 9. That § 36-10B-1 be AMENDED:

36-10B-1. Terms used in this chapter mean:

(1) "Accredited college or university," a college or university accredited by the United States regional accrediting agencies recognized by the Council on Postsecondary Accreditation and the United States Department of Education;

(2) "Board," the ~~South Dakota~~ State Board of Medical and Osteopathic Examiners;

(3) "Commission," the Commission on Dietetic Registration that is a member of the National Commission for Certifying Agencies;

(4) ~~"Committee," the Nutrition and Dietetics Advisory Committee to the board;~~

~~(5)~~ "Dietitian," a person who engages in nutrition or dietetics practice and uses the title dietitian pursuant to § 36-10B-2;

~~(6)~~(5) "Licensed nutritionist," a person licensed under this chapter;

~~(7)~~(6) "Nutritionist," a person who engages in nutrition or dietetics practice and uses the title of nutritionist pursuant to § 36-10B-2;

~~(8)~~(7) "Nutrition care services," any of the following:

(a) Assessment of the nutritional needs of individuals or groups;

(b) Establishment of priorities, goals, and objectives to meet nutritional needs;

(c) Provision of nutrition counseling for both normal and therapeutic needs;

(d) Development, implementation, and management of nutrition care services; or

(e) Evaluation, adjustment, and maintenance of appropriate standards of quality in nutrition care;

~~(9)~~(8) "Nutritional assessment," the evaluation of the nutritional needs of individuals or groups based on appropriate biochemical, anthropometric, physical, and dietary data to determine nutrient needs and recommend appropriate nutritional intake; and

~~(10)~~(9) "Nutrition counseling," advising and assisting individuals or groups on appropriate nutritional intake by integrating information from the nutritional assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status.

Section 10. That § 36-10B-3 be AMENDED:

36-10B-3. The board may:

(1) Examine qualified applicants for a license to practice nutrition and dietetics, issue licenses to applicants who meet the requirements established by this chapter, and renew licenses as recommended by the ~~committee~~ nutrition and dietetics council; and

(2) Adopt rules pursuant to chapter 1-26, that set professional, practice, and ethical standards for licensed nutritionists.

Section 11. That § 36-10B-4 be AMENDED:

36-10B-4. The board shall appoint a nutrition and dietetics ~~advisory committee~~ council composed of five members. ~~The members shall be~~ Each member must be a registered ~~dietitians~~ dietitian or ~~qualified nutritionists~~ licensed nutritionist. ~~Each committee~~ The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may be appointed to more than three consecutive, full terms. If a vacancy occurs, the board ~~shall~~ must appoint a ~~person~~ new member to fill the unexpired term. The appointment of a ~~person~~ member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business.

The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee may assist~~ council shall:

(1) Assist the board in ~~evaluating the qualifications of applicants for licensure. The committee may make~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of dieticians and nutritionists;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to dieticians and licensed nutritionists with the council. ~~The committee shall meet the requirements of chapter 1-25 regarding open meetings.~~

Section 12. That § 36-29-8 be AMENDED:

36-29-8. The board shall appoint an athletic training ~~committee~~ council composed of three residents of this state who are licensed to practice athletic training ~~in the state~~ in accordance with this chapter. ~~This committee~~ The term of office for each member is three years. No member may serve more than three consecutive, full terms. If a vacancy occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee~~ council shall ~~assist~~:

(1) Assist the board in ~~conducting exams and shall assist the board in all matters pertaining to the licensure, practice and discipline of those licensed to practice athletic training in this state and the establishment of rules pertaining to athletic training~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of athletic trainers;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting. ~~Each committee member shall serve a term of three years. No committee member may be appointed to more than three consecutive full terms. If a vacancy arises due to death, retirement, or removal from the state, the vacancy shall be filled in the same manner as an original appointment. The member shall serve the remainder of the unexpired term. The appointment to an unexpired term is not considered a full term. The committee shall meet the requirements of chapter 1-25 regarding open meetings~~

The board shall communicate activity on all matters relating to athletic trainers with the council.

Section 13. That § 36-31-1 be AMENDED:

36-31-1. Terms used in this chapter mean:

(1) ~~"Association," the South Dakota Occupational Therapy Association;~~

~~(2)~~ "Board~~ of examiners~~," the~~ South Dakota~~ State Board of Medical and Osteopathic Examiners;

~~(3)~~(2) "Occupational~~ therapists~~ therapist," any person licensed to practice occupational therapy as defined in this chapter and whose license is in good standing;

~~(4)~~(3) "Occupational therapy," the evaluation, planning and implementation of a program of purposeful activities to develop or maintain adaptive skills necessary to achieve the maximal physical and mental functioning of the individual in his or her daily pursuits. The practice of occupational therapy includes consultation, evaluation, and treatment of individuals whose abilities to cope with the tasks of living are threatened or impaired by developmental deficits, the aging process, learning disabilities, poverty and cultural differences, physical injury or disease, psychological and social disabilities, or anticipated dysfunction. Occupational therapy services include such treatment techniques as task-oriented activities to prevent or correct physical or emotional deficits or to minimize the disabling effect of these deficits in the life of the individual; such evaluation techniques as assessment of sensory integration and motor abilities, assessment of development of self-care and feeding, activities and capacity for independence, assessment of the physical capacity for prevocational and work tasks, assessment of play and leisure performance, and appraisal of living areas for the handicapped; physical agent modalities limited to the upper extremities to enhance physical functional performance, if certified in accordance with § 36-31-6; and specific occupational therapy techniques such as activities of daily living skills, designing, fabricating, or applying selected orthotic devices or selecting adaptive equipment, sensory integration and motor activities, the use of specifically designed manual and creative activities, specific exercises to enhance functional performance, and treatment techniques for physical capabilities for work activities. Such techniques are applied in the treatment of individual patients or clients, in groups, or through social systems;

~~(5)~~(4) "Occupational therapy aide," any person who assists in the practice of occupational therapy under the direct supervision of an occupational therapist or occupational therapy assistant;

~~(6)~~(5) "Occupational therapy assistant," any person licensed to assist in the practice of occupational therapy, under the supervision of or with the consultation of a licensed occupational therapist and whose license is in good standing; and

~~(7) "Occupational therapy committee," the committee provided for in this chapter;~~

~~(8)~~(6) "Physical agent modalities," modalities that produce a biophysiological response through the use of light, water, temperature, sound, or electricity, or mechanical devices. Physical agent modalities include:

(a) Superficial thermal agents such as hydrotherapy/whirlpool, cryotherapy (cold packs/ice), fluidotherapy, hot packs, paraffin, water, infrared, and other commercially available superficial heating and cooling technologies;

(b) Deep thermal agents such as therapeutic ultrasound, phonophoresis, and other commercially available technologies;

(c) Electrotherapeutic agents such as biofeedback, neuromuscular electrical stimulation, functional electrical stimulation, transcutaneous electrical nerve stimulation, electrical stimulation for tissue repair, high-voltage galvanic stimulation, and iontophoresis and other commercially available technologies; and

(d) Mechanical devices such as vasopneumatic devices and CPM (continuous passive motion).

Section 14. That § 36-31-2 be AMENDED:

36-31-2. The board shall appoint an occupational therapy ~~committee~~ council composed of ~~three registered occupational therapists or~~ two ~~registered~~ occupational therapists and one ~~certified~~ occupational therapy assistant. ~~The committee shall assist the Board of Examiners in approving qualifications of persons applying for a license to practice occupational therapy in the state and the promulgation of rules pertaining to occupational therapy, including guidelines for continuing competency. The committee shall meet at least annually or as necessary to conduct business. Each committee~~ The term of office for each member ~~shall serve a term of~~ is three years. No member may serve more than three consecutive, full terms. ~~Each person nominated to serve on the committee shall have the following qualifications:~~

~~(1) The person shall be a resident of the state;~~

~~(2) The person shall be licensed to practice occupational therapy in the state; and~~

~~(3) The person shall have practiced occupational therapy a minimum of three years.~~

If ~~any~~ a vacancy ~~arises on the committee, the vacancy shall be filled in the same manner as an original appointment. The member shall serve the remainder of~~ occurs, the board must appoint a new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The council shall meet at least twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The ~~committee~~ council shall meet the requirements of chapter 1-25 regarding open meetings.

The council shall:

(1) Assist the board in all matters related to the licensure, practice, education, continuing education, investigation, and discipline of occupational therapists and occupational therapy assistants;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to occupational therapists or occupational therapy assistants with the council.

Section 15. That § 36-36-15 be AMENDED:

36-36-15. The board shall appoint a genetic counselor ~~advisory committee~~ council composed of ~~a minimum of~~ one genetic counselor and three physicians licensed pursuant to chapter 36-4. ~~Each committee~~ The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may

be appointed to more than three consecutive, full terms. If a vacancy occurs, the board ~~shall~~ must appoint a ~~person~~ new member to fill the unexpired term. The appointment of a member to an unexpired term is not considered a full term.

The ~~committee~~ council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~advisory committee~~ council shall ~~assist~~:

(1) Assist the board in ~~the regulation~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of genetic counselors pursuant to this chapter~~. The committee shall also make~~;

(2) Make recommendations to the board regarding rules promulgated pursuant to this chapter~~. The committee shall meet the requirements of chapter 1-25 regarding open meetings~~; and

(3) Submit meeting minutes and any recommendations to the board following each council meeting.

The board shall communicate activity on all matters relating to genetic counselors with the council.

Section 16. That § 36-4-2 be REPEALED:

~~The Board of Examiners shall include six doctors of medicine holding a degree of M.D., and one doctor of osteopathy holding the degree of D.O. The members of the board shall be licensed in the State of South Dakota, and shall be skilled and capable physicians in good standing.~~

Section 17. That § 36-4-2.1 be REPEALED:

~~The membership of the Board of Examiners shall include two lay members who are users of the services regulated by the board. One lay member may be a nonphysician health care professional licensed by the board. The Governor shall appoint the lay members. The lay members shall have the same term of office as other members of the board.~~

Signed February 12, 2024

Chapter 153

(Senate Bill 64)

An Act to revise provisions related to the regulation of emergency medical services and associated personnel.

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

Section 1. That § 36-4B-1 be AMENDED:

36-4B-1. Terms used in this chapter mean:

(1) "Advanced life support," a level of emergency care consisting of basic life support procedures and definitive therapy ~~including the use of invasive~~

~~procedures and may include the use of drugs and manual defibrillation~~;

(2) "Advanced life support personnel," ~~any person other than a physician who has completed a department and board approved program and is licensed or holds a privilege as an emergency medical technician-intermediate/85; emergency medical technician-intermediate/99; emergency medical technician-advanced; or emergency medical technician-paramedic as set forth in this chapter, or its equivalent~~ a person licensed by the board as:

(a) An emergency medical technician-intermediate/85;

(b) An emergency medical technician-intermediate/99;

(c) An advanced emergency medical technician; or

(d) A paramedic;

(3) "Basic life support personnel," a person:

(a) Certified by the board as an ambulance driver;

(b) Licensed by the board as an emergency medical responder; or

(c) Licensed by the board as an emergency medical technician;

(4) "Board," the ~~South Dakota~~ State Board of Medical and Osteopathic Examiners;

~~(4) "Department," the South Dakota State Department of Health;~~

(5) "Direct ~~medical~~ control," real-time communications during an ambulance run between ~~field~~ emergency medical services personnel and a physician, physician assistant, or nurse practitioner, licensed in this state ~~during an emergency run~~;

(6) "Emergency medical services," health care provided to ~~the~~ a patient by ~~advanced life support~~ emergency medical services personnel ~~licensed pursuant to this chapter~~;

~~(7) "Emergency medical technician-advanced," any person who has successfully completed a program of study approved by the department and the board in all areas of training and skills set forth in the advanced emergency medical technician instructional guidelines and standards, including placement of esophageal and supraglottic airways, intravenous cannulation, shock management, administration of specific medications, and other advanced skills approved by the board, and who is licensed by the board to perform such advanced skills;~~

~~(8) "Emergency medical technician/EMT," any person trained in emergency medical care in accordance with standards prescribed by rules and regulations promulgated pursuant to § 34-11-6, who provides emergency medical services, including automated external defibrillation under indirect medical control, in accordance with the person's level of training;~~

~~(9) "Emergency medical technician-intermediate/85," any person who has successfully completed a department and board approved program of instruction in basic life support and advanced life support skills in shock and fluid therapy, placement of esophageal airways, and other advanced life support skills approved by board action, and who is licensed by the board to perform such skills, including automated external defibrillation;~~

~~(10) "Emergency medical technician-paramedic," any person who has successfully completed a program of study approved by the department and the board and is licensed as an emergency medical technician-~~

~~paramedic, which includes all training and skills set forth herein for emergency medical technician intermediate/85 and emergency medical technician intermediate/99, and other advanced skills programs approved by board action, and who is licensed by the board to perform such intermediate, special, and advanced skills;~~

~~(11) "Emergency medical technician intermediate/99," any person who has successfully completed a department and board approved program of instruction in all areas of emergency medical technician intermediate/85 curriculum plus other specific areas of emergency medical care in the following areas: manual and automated external defibrillation, telemetered electrocardiography, administration of cardiac drugs, administration of specific medications and solutions, use of adjunctive breathing devices, advanced trauma care, tracheotomy suction, esophageal airways and endotracheal intubation, intraosseous infusion, or other special skills programs approved by board action, and who is licensed by the board to perform intermediate skills plus such special skills;~~

~~(12) "Epinephrine auto injector," a spring loaded needle and syringe with a single dose of epinephrine that will automatically release and inject the medicine, any similar automatic pre filled cartridge injector, or any similar automatic injectable equipment;~~

~~(13) "Good faith," honesty, in fact, in the conduct, or transaction concerned;~~

~~(14) "Gross negligence," the intentional failure to perform a manifest duty in reckless disregard of the consequences as affecting the life or health of another;~~

~~(15) "Hour of advanced life support studies," fifty minutes of training;~~

~~(16)~~(7) "Emergency medical services personnel," a person licensed by the board as:

(a) An emergency medical responder;

(b) An emergency medical technician;

(c) An emergency medical technician-intermediate/85;

(d) An emergency medical technician-intermediate/99;

(e) An advanced emergency medical technician; or

(f) A paramedic; and

(8) "Indirect ~~medical~~ control," the establishment and implementation of ~~system~~ guidelines, policies ~~and procedures, such as medical treatment protocols, quality assurance programs and case reviews~~, and protocols approved by a physician, physician assistant, or nurse practitioner, licensed in ~~South Dakota;~~

~~(17) "Local government," any county, municipality, township, or village in this state;~~

~~(18) "Medical community," the physicians and medical resources located and available within a geographic area;~~

~~(19) "Medical emergency," an event affecting an individual in such a manner that a need for immediate medical care is created;~~

~~(20) "Patient," an individual who, as a result of illness or injury, needs medical attention; and~~

~~(21) "Prehospital care," those emergency medical services rendered to patients in an out-of-hospital setting, administered for analytic, stabilizing, or preventive purposes~~ this state.

Section 2. That § 36-4B-2 be AMENDED:

36-4B-2. ~~A state advanced life support~~ The board shall administer a program ~~is created. It shall be implemented by the department of health under the direction of the Board of Medical and Osteopathic Examiners~~ for emergency medical services personnel, in accordance with this chapter.

Section 3. That § 36-4B-3 be AMENDED:

36-4B-3. It is a Class 2 misdemeanor for any person not licensed ~~under~~ in accordance with this chapter to ~~hold herself or himself out~~ purport to be, or practice as, an emergency medical ~~technician intermediate/85, emergency medical technician intermediate/99, or an emergency medical technician-paramedic~~ services personnel. Each violation is a separate offense.

Section 4. That § 36-4B-7 be AMENDED:

36-4B-7. ~~An~~ The board shall approve educational ~~program~~ programs for the instruction of ~~advanced life support~~ emergency medical services personnel ~~shall meet the following general requirements:~~

~~(1) The educational program shall develop an evaluation mechanism satisfactory to the Board of Medical and Osteopathic Examiners to determine the effectiveness of its theoretical and clinical programs, the results of which shall be made available to the board annually;~~

~~(2) Instructors in the theoretical and clinical training programs shall be competent and properly qualified in their respective fields of instruction and clinical training;~~

~~(3) The educational program shall establish a method of definitive candidate selection satisfactory to the board; and~~

~~(4) The number of students enrolled in the theoretical program may not exceed the number that can be clinically supervised and trained~~ provided the programs meet or exceed the standards established for certification by the National Registry of Emergency Medical Technicians, as of January 1, 2024.

A person may not offer a program for the instruction of emergency medical services personnel without first receiving approval by the board, in accordance with this section.

Section 5. That § 36-4B-12 be AMENDED:

36-4B-12. ~~Failure of an educational program to comply with the general and specific curriculum requirements of this chapter shall result in withdrawal of the board's~~ The board may withdraw or deny approval of any educational program if the program fails to comply with the provisions of § 36-4B-7.

Section 6. That § 36-4B-13 be AMENDED:

36-4B-13. The ~~board may issue an appropriate advanced life support license to any person who files a verified application upon a form prescribed by the board, pays the required fee, and furnishes evidence satisfactory to the board that the person has met the following qualifications:~~

~~(1) Completes successfully an appropriate course of study approved by the board for the license sought; and~~

~~(2) Completes successfully a written and practical examination testing the applicant's knowledge in theoretical and applied prehospital primary care as it applies to the practice of the advanced life support license sought~~ board shall, by rule promulgated pursuant to chapter 1-26:

(1) Establish the educational and practical criteria and requirements for licensure as:

(a) An emergency medical responder;

(b) An emergency medical technician;

(c) An emergency medical technician-intermediate/85;

(d) An emergency medical technician-intermediate/99;

(e) An advanced emergency medical technician; and

(f) A paramedic; and

(2) Provide an application form for use in requesting licensure.

Section 7. That § 36-4B-13.1 be AMENDED:

36-4B-13.1. In addition to the requirements ~~of~~ referenced in § 36-4B-13, ~~each~~ an applicant for licensure as an emergency medical technician or advanced life support personnel ~~must~~ shall submit to a state and federal criminal background check. The applicant ~~must submit~~ shall provide a full set of ~~the applicant's~~ fingerprints to the board in ~~a~~ the form and manner prescribed by the board. The board shall submit the ~~applicant's~~ fingerprints to the Division of Criminal Investigation ~~to conduct~~ for a criminal background check by the division and the Federal Bureau of Investigation. The applicant ~~must~~ shall sign a release of information to the board, and pay any fee charged for the ~~cost of~~ fingerprinting or ~~conducting~~ the background check.

Upon completion of the background check, the division ~~shall~~ must deliver ~~to the board all~~ the applicant's criminal history ~~record~~ information ~~regarding the applicant, and~~ to the board. The board shall consider this information in ~~its determination~~ determining whether to issue a license to the applicant. The board may not issue a license to an applicant before receiving this information. The board may ~~only~~ not disseminate ~~an applicant's~~ any information obtained under this section to a person ~~on or~~ not employed by the board.

~~The board may require any licensee who is the subject of a disciplinary investigation to submit to a state and federal background check. The board may deny the issuance of, suspend, or revoke a license for failure to submit to or cooperate with a background check.~~

Section 8. That a NEW SECTION be added:

The board may require a licensee who is the subject of a disciplinary investigation to submit to a fingerprint-based state and federal criminal background check.

The board may suspend or revoke a license for the licensee's failure to submit to or cooperate with the background check.

Section 9. That § 36-4B-14 be AMENDED:

36-4B-14. The board may issue a license ~~advanced life support personnel~~

~~in this state, without examination, if the person has~~ to an individual who:

(1) Has passed the ~~national registry written and practical~~ National Registry of Emergency Medical Technicians examination ~~and meets~~;

(2) Meets all other requirements of this chapter~~. Applicants shall hold~~ for the license sought; and

(3) Holds current licensure in another state or current certification by the ~~national registry~~ National Registry of Emergency Medical Technicians for the license sought.

Section 10. That § 36-4B-15 be AMENDED:

36-4B-15. ~~Advanced life support~~ Except as otherwise provided in this section, emergency medical services personnel ~~shall~~ must, through the use of direct and indirect control, be supervised by a ~~physician who directs~~ physician licensed in accordance with chapter 36-4.

If emergency medical services personnel are affiliated with an ambulance service that has been granted a hardship exemption in accordance with chapter 36-11, the personnel must, through the use of direct and indirect control, be supervised by a:

(1) Physician licensed in accordance with chapter 36-4;

(2) Physician assistant licensed in accordance with chapter 36-4A; or

(3) Nurse practitioner licensed in accordance with chapter 36-9A.

A physician, or a physician assistant or nurse practitioner if the ambulance service has been granted a hardship exemption, must oversee the practice and ~~reviews~~ review the ~~work records and practice permitted by §§ 36-4B-16 and 36-4B-17, to ensure that the patient is given proper treatment~~ patient care reports of the emergency medical services personnel.

Section 11. That § 36-4B-16 be AMENDED:

36-4B-16. An emergency medical technician-intermediate/99 may ~~perform basic life support techniques and while under proper medical supervision intermediate skills, special skills techniques, and~~:

(1) Respond to, assess, and triage non-urgent, urgent, and emergent requests for medical care;

(2) Apply basic and focused advanced knowledge and skills necessary to provide patient care transportation;

(3) Perform interventions with the basic and advanced equipment typically found in an ambulance;

(4) Perform intravenous cannulation for shock management;

(5) Administer medications approved by the board; and

(6) Perform other advanced ~~life support~~ skills ~~for which they are licensed~~ approved by the board.

Section 12. That § 36-4B-16.1 be AMENDED:

36-4B-16.1. An emergency medical technician-intermediate/85 may ~~perform basic life support techniques as set forth in chapter 34-11 and while under proper medical supervision advanced life support techniques listed in § 36-4B-1 and~~:

(1) Respond to, assess, and triage non-urgent, urgent, and emergent requests for medical care;

(2) Apply basic and focused advanced knowledge and skills necessary to provide patient care transportation;

(3) Perform interventions with the basic equipment typically found in an ambulance;

(4) Perform intravenous cannulation for shock management; and

(5) Perform other advanced ~~life support~~ skills ~~for which they are licensed~~ approved by the board.

Section 13. That § 36-4B-16.2 be AMENDED:

36-4B-16.2. An advanced emergency medical ~~technician advanced~~ technician may ~~perform placement of esophageal and supraglottic airways, intravenous cannulations, shock management, administration of specific~~:

(1) Respond to, assess, and triage nonurgent, urgent, and emergent requests for medical care;

(2) Apply basic and focused advanced knowledge and skills necessary to provide patient care transportation;

(3) Perform interventions with the basic and advanced equipment typically found in an ambulance;

(4) Administer medications~~,~~ approved by the board;

(5) Perform focused advanced skills to mitigate specific life-threatening, medical, and psychological conditions with a targeted set of skills beyond the level of an emergency medical technician; and

(5) Perform other advanced skills approved by the board.

Section 14. That § 36-4B-17 be AMENDED:

36-4B-17. ~~An emergency medical technician paramedic~~ A paramedic may ~~perform basic life support techniques as set forth in chapter 34-11 and while under proper medical supervision all intermediate and special skills. A paramedic may also perform other~~:

(1) Respond to, assess, and triage nonurgent, urgent, and emergent requests for medical care;

(2) Apply basic and focused advanced knowledge and skills necessary to determine patient physiologic, psychological, and psychosocial needs;

(3) Perform interventions with the basic and advanced equipment typically found in an ambulance, including diagnostic equipment approved by an ambulance service medical director;

(4) Administer medications approved by the board;

(5) Provide specialized interfacility care during patient transport; and

(6) Perform other advanced ~~life support~~ skills ~~for which he is licensed~~ approved by the board.

Section 15. That a NEW SECTION be added to chapter 36-4B:

An emergency medical responder may:

(1) Provide initial emergency care, consisting of first aid and basic life support to a patient at the scene of an emergency; and

(2) Assist an emergency medical technician or advanced life support personnel both at the scene of an emergency and during the transport of a patient to a medical facility.

An emergency medical responder may not make decisions independently regarding the appropriate disposition of a patient.

Section 16. That a NEW SECTION be added to chapter 36-4B:

An emergency medical technician may, in addition to any services provided by an emergency medical responder, provide pre-hospital emergency care that includes interventions using basic equipment, typically found in an ambulance, and necessary to stabilize and safety transport patients.

Section 17. That § 36-4B-18.1 be AMENDED:

36-4B-18.1. A critical care endorsement is hereby created. The board shall issue the endorsement to any person who is licensed as ~~an emergency medical technician-paramedic~~ a paramedic and:

(1) Completes the educational requirements and training, in critical care transport, approved by the board and promulgated in accordance with section 36-4B-35; or

(2) Is certified as a critical care paramedic or a flight paramedic by the International Board of Specialty Certification.

Section 18. That § 36-4B-18.2 be AMENDED:

36-4B-18.2. A community paramedic endorsement is hereby created. The board may issue a community paramedic endorsement to a person who:

(1) Is licensed as ~~an emergency medical technician-paramedic~~ a paramedic;

(2) Completes the education requirements and training approved by the board and promulgated in accordance with § 36-4B-35; and

(3) Applies on a form prescribed by the board.

Section 19. That § 36-4B-20 be AMENDED:

36-4B-20. If ~~advanced life support~~ emergency medical services personnel ~~should~~ render services in a hospital ~~and related institutions as~~ or other healthcare facility licensed pursuant to chapter 34-12, ~~said advanced life support personnel shall be~~ they are subject to the ~~rules and regulations~~ policies and protocols of that hospital ~~and related institutions~~ or facility.

Section 20. That § 36-4B-22 be AMENDED:

36-4B-22. No agency, organization, institution, corporation, or entity of state or local government ~~which~~ that sponsors, authorizes, supports, finances or supervises the functions of emergency medical service personnel ~~licensed and authorized pursuant to this chapter, including advanced life support personnel, may be~~ is liable for any civil damages for any act or omission in connection with ~~sponsorship, authorization, support, finance, or supervision of such emergency medical services~~ the personnel, where the act or omission occurs in connection with ~~their~~ the personnel's training or with services rendered outside a hospital and where the life of a patient is in immediate danger, unless the act or omission is

inconsistent with the training of the ~~emergency medical services~~ personnel or the act or omission was the result of gross negligence or willful misconduct.

Section 21. That § 36-4B-23 be AMENDED:

36-4B-23. No principal, agent, contractor, employee or representative of an agency, organization, institution, corporation, or entity of state or local government ~~which~~ that sponsors, authorizes, supports, finances or supervises the functions of emergency medical services personnel ~~licensed and authorized pursuant to this chapter, including advanced life support personnel, may be~~ is liable for any civil damages for any act or omission in connection with ~~such~~ the sponsorship, authorization, support, finance or supervision of ~~such emergency medical services~~ the personnel, where the act or omission occurs in connection with ~~their~~ the personnel's training, or occurs outside a hospital where the life of a patient is in immediate danger, unless the act or omission is inconsistent with the training of the ~~emergency medical services~~ personnel or the act or omission was the result of gross negligence or willful misconduct.

Section 22. That § 36-4B-24 be AMENDED:

36-4B-24. ~~No physician~~ A physician, nurse practitioner, or physician assistant who supervises ~~the functions of~~ emergency medical services personnel ~~licensed and authorized pursuant to this chapter, including advanced life support personnel, may be~~ is not liable for any civil damages for any act or omission of the emergency medical services personnel, where the life of a patient is in immediate danger, unless the act or omission was the result of gross negligence or willful misconduct.

Section 23. That § 36-4B-26 be AMENDED:

36-4B-26. ~~A person holding an advanced life support~~ An initial license issued to emergency medical services personnel ~~license under the provisions of~~ in accordance with this chapter ~~shall renew the license annually on or before the fifteenth day of July. A person licensed as an emergency medical technician intermediate/85, an emergency medical technician intermediate/99, or an emergency medical technician paramedic shall renew the license upon a form furnished to the person by the board~~ expires on April thirtieth in the second calendar year after issuance and every two years thereafter.

In order to renew a license, emergency medical services personnel must submit to the board, prior to the expiration date:

(1) An application for renewal, as prescribed by the board;

(2) The renewal fee in the amount set forth in § 36-4B-29; and

(3) Verification of having met the continuing education requirements, as set forth in rules authorized under § 36-4B-35.

Section 24. That § 36-4B-28 be AMENDED:

36-4B-28. ~~Any~~ The board shall suspend any license not renewed ~~pursuant to § 36-4B-27 shall be suspended. A license so suspended may be reinstated~~ within the time required, as set forth in § 36-4B-26.

The board may reinstate a license, during the ~~following twelve months by~~ twelve-month period following the date of expiration, upon receiving proof ~~of~~ that the person who held the license:

(1) Complied with the requirements ~~met~~ set forth in ~~§ 36-4B-27,~~ § 36-4B-26; and ~~by payment of the renewal fee and a reinstatement fee as fixed by~~

~~the board. Thereafter, a suspended license may be reinstated upon payment of a~~

(2) Paid the reinstatement fee ~~fixed~~ established by the board pursuant to § 36-4B-29 ~~following specific approval by the board~~.

Section 25. That § 36-4B-29 be AMENDED:

36-4B-29. The board shall promulgate rules pursuant to chapter 1-26 to ~~set fees in each of the following categories in an amount which will produce sufficient revenue for the ensuing fiscal year not to exceed one hundred twenty percent of the anticipated expenses of the board for the operation of the advanced life support program by the board for that year.~~

~~The license~~ establish fees for ~~all advanced life support~~ emergency medical services personnel ~~shall be~~ as follows:

(1) ~~Licensure by examination~~Initial licensure, not ~~less than fifteen dollars nor~~ more than fifty dollars;

(2) ~~Reexamination within one year, not less than fifteen dollars nor more than fifty dollars;~~

~~(3)~~ Licensure by reciprocity, not ~~less than twenty five dollars nor~~ more than seventy-five dollars;

~~(4)~~(3) ~~Renewal of a license~~Licensure renewal, not ~~less than ten dollars, nor~~ more than ~~twenty five~~ fifty dollars; and

~~(5)~~(4) Reissuance of a lost or destroyed license~~, following approval of the board~~, not more than ten dollars.

Section 26. That § 36-4B-31 be AMENDED:

36-4B-31. The board may deny the issuance or renewal of a license ~~or suspend or revoke the license of any advanced life support personnel issued under this chapter upon satisfactory proof of the person's incompetence, or unprofessional or dishonorable conduct as defined in § 36-4-30 or proof of a violation of this chapter~~ or certification, and may suspend or revoke a license or certification issued under this chapter, if the individual:

(1) Procures or attempts to procure a license or certification through fraud, deceit, misrepresentation, or in violation of the provisions of this chapter and rules promulgated thereunder;

(2) Is unable to perform the skills for which the individual is licensed;

(3) Has engaged in unprofessional or dishonorable conduct, as defined in § 36-4-30;

(4) Has been convicted of a felony that:

(a) Has a direct bearing upon the individual's ability to serve the public in a capacity certified or licensed by this chapter; or

(b) Has been convicted of a crime that requires the individual to register as a sex offender in any state;

(5) Has had the individual's National Registry of Emergency Technicians or other health care certification or license encumbered for any reason;

(6) Provides emergency medical services without authorization from a physician, physician assistant, or nurse practitioner; or

(7) Fails to respond to an emergency while on call through willful disregard and not by a good-faith error or circumstances beyond the individual's control.

Section 27. That § 36-4B-35 be AMENDED:

36-4B-35. The board shall promulgate rules, pursuant to chapter 1-26, to:

(1) Provide for an application form and process for the licensure of emergency medical services personnel and the certification of ambulance drivers;

(2) Set forth criteria for educational and training program approval, including instructor qualifications, student acceptance, and clinical requirements;

(3) Establish the educational and training ~~curriculum~~ requirements, and the ~~examination~~ National Registry of Emergency Medical Technicians requirements, for applicants ~~to become licensed as advanced life support personnel~~ seeking licensure as emergency medical services personnel;

(4) Provide for the renewal of ambulance driver certification and continuing education requirements;

~~(2)~~(5) Establish ~~the procedure~~ procedures for the administration of the ~~advanced life support~~ emergency medical services personnel program ~~and designate the responsibilities of the department and the board~~;

~~(3)~~(6) Regulate the professional conduct of ~~licensees~~ emergency medical services personnel and ambulance drivers;

~~(4)~~(7) Establish the educational and training requirements, and conditions for issuance of a critical care endorsement, as provided for in § 36-4B-18.1; ~~and~~

~~(5)~~(8) Establish the:

(a) Educational and training requirements and conditions for issuance of a community paramedic endorsement; and

(b) Practice protocols and supervisory requirements for a person with a community paramedic endorsement; and

(9) Establish the allowable skills and techniques performed by emergency medical services personnel under direct and indirect control.

Section 28. That § 36-4B-37 be AMENDED:

36-4B-37. The board shall appoint an ~~advanced life support~~ emergency medical services personnel ~~advisory committee~~ council composed of ~~four~~ five members ~~as follows~~:

(1) One emergency medical ~~technician-intermediate/85~~ technician;

(2) One emergency medical technician-intermediate/85, emergency medical technician-intermediate/99, or advanced emergency medical technician;

(3) ~~One emergency medical technician-paramedic~~Two paramedics; and

(4) One ~~emergency room~~ physician licensed in accordance with chapter 36-4 and trained in emergency medicine.

~~Each committee~~ The term of office for each member ~~shall serve a term of~~ is three years. No ~~committee~~ member may ~~be appointed to~~ serve more than three consecutive, full terms. If a vacancy occurs, the board ~~shall~~ must appoint a ~~person~~

new member to fill the unexpired term. The appointment of a ~~person~~ member to an unexpired term is not considered a full term.

The ~~committee~~ council shall meet at least ~~annually or~~ twice each year, at a time and place set by the council, and may hold additional meetings as necessary to conduct business. The council shall meet the requirements of chapter 1-25 regarding open meetings.

The ~~committee~~ council shall assist the board in ~~evaluating standards of care for advanced life support personnel and the regulation of advanced life support~~ all matters related to the licensure, practice, education, continuing education, investigation, and discipline of emergency medical services personnel pursuant to this chapter. The ~~committee~~ council shall ~~also~~ make recommendations to the board regarding rules promulgated pursuant to this chapter. ~~The committee shall meet the requirements of chapter 1-25 regarding open meetings~~ The council shall submit meeting minutes and recommendations to the board following each meeting.

The board shall communicate activity on all matters relating to emergency medical services personnel with the council.

Section 29. That chapter 36-4B be amended with a NEW SECTION:

Any individual licensed or certified in accordance with this chapter must report any of the following occurrences to the board, within thirty days of the date of the occurrence:

(1) Conviction or discipline for unprofessional conduct or dishonorable conduct, as defined in § 36-4-30;

(2) Any encumbrance of the individual's National Registry of Emergency Medical Technicians or other health care certification or licensure;

(3) Hospital disciplinary action implicating the individual;

(4) Action affecting the individual's privilege to practice;

(5) Judgment or settlement related to the individual's alleged malpractice; and

(6) Change in the individual's:

(a) Home address;

(b) Business address;

(c) Home phone number;

(d) Work phone number;

(e) Email address; or

(f) Other information that is used for communicating with the board.

Failure to report may constitute a basis for disciplinary action against the individual.

Section 30. That chapter 36-4B be amended with a NEW SECTION:

The board may issue a certification as an ambulance driver to a person who:

(1) Completes an emergency care course approved by the board; and

(2) Applies on a form prescribed by the board.

Section 31. That § 36-4B-10 be REPEALED:

~~Educational programs for instruction of advanced life support personnel shall be implemented by the Department of Health and approved by the board. Schools or institutions offering such programs shall submit applications for approval on forms provided by the board.~~

Section 32. That § 36-4B-11 be REPEALED:

~~The medical director of an educational program approved by the board shall notify the board if a change occurs in the directorship of the educational program or if major modifications in the curriculum are anticipated.~~

Section 33. That § 36-4B-18 be REPEALED.

~~In addition to tasks listed in §§ 36-4B-16 and 36-4B-17, an emergency medical technician intermediate/85, emergency medical technician intermediate/99, or an emergency medical technician paramedic may be permitted to perform, under direct or indirect medical control, such other tasks approved by the board, and for which adequate training and proficiency can be demonstrated.~~

Section 34. That § 36-4B-27 be REPEALED:

~~A request for emergency medical technician paramedic or emergency medical technician intermediate/99 license renewal shall be accompanied annually by the prescribed fee and accompanied in odd numbered years by satisfactory evidence of sixty hours of advanced life support studies during the preceding two years. A request for emergency medical technician intermediate/85 license renewal shall be accompanied annually by the prescribed fee and accompanied in odd numbered years by satisfactory evidence of forty hours of advanced life support studies during the preceding two years. The request shall also be accompanied by a letter from the supervising physician and the employer of the advanced life support personnel. If the advanced life support personnel is terminated the reasons shall be submitted to the board, in writing, by both the ambulance service and supervising physician, within seventy two hours of termination of any such working contract.~~

Section 35. That § 36-4B-33 be REPEALED:

~~If a person holding a license to practice advanced life support shall by final order or adjudication of a court of competent jurisdiction be adjudged to be mentally incompetent or insane, that person's license shall be suspended by the board after proceedings in compliance with chapter 1-26. Such suspension shall continue until the licensee is found or adjudged by such court to be restored to reason. The board may establish probationary conditions which it deems necessary for the best interest of the licensee.~~

Section 36. That § 36-4B-34 be REPEALED:

~~Upon application, the board may reissue a license to practice advanced life support to a person whose license has been canceled, suspended, or revoked. A reissuance of a license which has been canceled or revoked may not be made prior to one year after the cancellation or revocation and the reissuance of any license may be made in such manner, form, and conditions as the board may require.~~

Section 37. That § 36-4B-36 be REPEALED:

~~The board may not pass any rules which:~~

~~(1) Are not authorized by § 36-4B-35 or are not designated to meet the intent of this chapter;~~

~~(2) Discriminate between licensees of the same class;~~

~~(3) Attempt to regulate persons, schools, or other institutions not licensed under this chapter;~~

~~(4) Have as their primary purpose the promotion or protection of the economic interests of licensees;~~

~~(5) Restrict the number of licensees for reasons other than their qualifications;~~

~~(6) Discriminate between programs approved under this chapter which train prospective licensees, whether in or out of the state.~~

Signed March 18, 2024

Chapter 154

(House Bill 1074)

An Act to expand eligibility to practice as a dental hygienist under the collaborative supervision of a dentist.

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

Section 1. That § 36-6A-40.1 be AMENDED:

36-6A-40.1. A dental hygienist may provide preventive and therapeutic services under the collaborative supervision of a dentist if the dental hygienist has met the following requirements:

(1) Possesses a license to practice in the state ~~and has been actively engaged in the practice of clinical dental hygiene in two of the previous three years~~;

(2) Has a ~~written~~ collaborative agreement with a dentist; and

(3) Has satisfactorily demonstrated knowledge of ~~medical~~:

(a) Medical and dental emergencies and their management; ~~infection~~

(b) Infection control; ~~pharmacology~~

(c) Pharmacology; ~~disease~~

(d) Disease transmission; ~~management~~

(e) Management of early childhood caries; and ~~management~~

(f) Management of special needs populations.

Section 2. That § 36-6A-40.2 be AMENDED:

36-6A-40.2. A dental hygienist seeking to provide preventive and therapeutic services under collaborative supervision shall submit evidence, as prescribed by the board, of meeting the requirements of § 36-6A-40.1 and shall pay a fee ~~not to exceed thirty dollars~~ set by the board.

The board shall, by rules promulgated pursuant to chapter 1-26, establish the ~~required~~:

(1) Required fee~~, the minimum~~, not to exceed thirty dollars;

(2) Minimum requirements for a collaborative agreement~~, the preventive~~;

(3) Preventive and therapeutic services that may be performed~~, the location~~;

(4) Location or facilities where services may be performed~~,~~; and ~~the evidence~~

(5) Evidence required to demonstrate the ~~active practice and~~ knowledge required pursuant to § 36-6A-40.1.

Signed February 5, 2024

Chapter 155

(House Bill 1099)

An Act to establish educational standards for the expanded practice of optometry.

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

Section 1. That § 36-7-1 be AMENDED:

36-7-1. The practice of optometry is declared to be a profession and is defined as:

(1) The examination of the human eye and its appendages~~, and the~~;

(2) The employment of any means for the measurement of the powers of visions, or any visual, muscular, neurological, interpretative, or anatomical ~~anomalies~~ anomaly of the visual ~~processes, and the~~ process;

(3) The prescribing or employment of lenses, prisms, frames, mountings, and visual training ~~procedure, the~~ procedures;

(4) The prescribing or administration, except by injection unless otherwise permitted by this chapter, of any pharmaceutical ~~agents~~ agent rational to the diagnosis and treatment of the human eye and its appendages~~, and any other~~;

(5) The employment of any means or method for the correction, remedy, or relief of any ~~insufficiencies~~ insufficiency or abnormal ~~conditions~~ condition of the visual ~~processes~~ process of the human eye and its appendages ~~except surgery. However, an optometrist may remove~~, provided the term "any means or method" does not include surgeries, unless otherwise permitted by this chapter;

(6) The removal of a superficial foreign ~~bodies~~ body from the eye~~. The prescription~~;

(7) The prescribing of contact lenses, except by a ~~practitioner~~ physician licensed under chapter 36-4~~, constitutes the practice of optometry. An optometrist is one who practices optometry under the provisions of this chapter~~;

(8) The use of intense pulsed light for the treatment of dry eye disease; and

(9) Subject to the requirements set forth in section 2 of this Act:

(a) The intradermal injection of a paralytic agent;

(b) The intralesional injection of a steroid to treat a chalazion;

(c) The use of a local anesthetic in conjunction with the primary removal of a pedunculated skin tag;

(d) The performance of a selective laser trabeculoplasty; and

(e) The performance of a posterior capsulotomy using an yttrium aluminum garnet laser.

Any procedure referenced in this section, when performed by a licensed optometrist, in accordance with this chapter, does not constitute the practice of medicine, for purposes of chapter 36-4.

Section 2. That chapter 36-7 be amended with a NEW SECTION:

Before an optometrist may perform any one or more of the procedures set forth in subdivision 36-7-1(9), the optometrist must provide to the board, at the time and in the manner directed by the board, verifiable evidence that:

(1) The optometrist:

(a) Received a passing score on the laser examination and on the surgical procedures examination, offered by the National Board of Examiners in Optometry; or

(b) Graduated, prior to July 1, 2024, from an optometric school or college approved by the Accreditation Council on Optometric Education or from an optometric school or college approved by the board;

(2) The optometrist satisfactorily completed a course that:

(a) Is at least thirty-two hours in duration;

(b) Is approved by the board;

(c) Includes content related to each procedure set forth in subdivision 36-7-1(9); and

(d) Is proctored by an ophthalmologist or is proctored by an optometrist who is authorized to perform all of the procedures set forth in subdivision 36-7-1(9) by the optometric licensing board of a state in which a qualified optometrist may perform all of the procedures; and

(3) The optometrist has demonstrated competency in accordance with the performance criteria set forth in section 3 of this Act.

The board shall review the evidence required by this section and upon verification of an optometrist's compliance with the requirements, authorize the optometrist to perform one or more of the procedures set forth in subdivision 36-7-1(9). The board shall develop and implement a system for documenting any actions under this section.

Section 3. That chapter 36-7 be amended with a NEW SECTION:

The demonstration of competency required in accordance with subdivision (3) of section 2 of this Act, must occur in the presence and under the direct supervision of an ophthalmologist licensed in this state, or in the presence and

under the direct supervision of an optometrist licensed in this state and authorized by the board, pursuant to section 2 of this Act, to perform all of the procedures set forth in subdivision 36-7-1(9).

The demonstration of competency with respect to the intradermal injection of a paralytic agent, the intralesional injection of a steroid to treat a chalazion, the use of a local anesthetic in conjunction with the primary removal of a pedunculated skin tag, and the performance of a selective laser trabeculoplasty, must each occur on at least five human eyes.

The demonstration of competency with respect to the performance of a posterior capsulotomy using an yttrium aluminum garnet laser must occur on at least ten human eyes.

The supervising ophthalmologist or optometrist shall notify the board when competency has been demonstrated, in accordance with this section. The notification must occur at the time and in the manner determined by the board.

Section 4. That § 36-7-24 be AMENDED:

36-7-24. The board may, in compliance with chapter 1-26, ~~may~~ impose disciplinary sanctions ~~against any~~ on an optometrist for ~~the following causes~~:

(1) Conviction of a felony~~, as shown by a certified copy of the record of the court of conviction~~;

(2) Obtaining, or attempting to obtain, a license by fraudulent misrepresentation;

(3) Malpractice;

(4) Continued practice when knowingly having an infectious or contagious disease, or after sustaining a physical or mental disability that renders further practice potentially harmful or dangerous;

(5) Use of alcohol or other substances that renders the optometrist unfit to practice with reasonable skill and safety;

(6) Engaging in any procedure set forth in subdivision 36-7-1(9), prior to meeting the requirements of this chapter;

(7) Unprofessional conduct, as defined in § 36-7-25; or

~~(7)~~(8) Failure to submit to or cooperate with ~~the~~ a criminal background ~~investigation~~ check requested by the board under § 36-7-12.2.

Section 5. That chapter 36-7 be amended with a NEW SECTION:

Nothing in this chapter may be construed to allow the performance, by an optometrist, of:

(1) Intraocular injections;

(2) Intraocular surgery; or

(3) Refractive surgery.

Section 6. That § 36-7-1.1 be REPEALED:

~~Notwithstanding anything in this chapter to the contrary, an optometrist, except an optometrist certified for diagnostic and therapeutic agents as provided by §§ 36-7-15.1 to 36-7-15.3, inclusive, and as provided in § 36-7-31, may not treat glaucoma or ocular hypertension.~~

Section 7. That § 36-7-1.2 be REPEALED:

~~No optometrist may prescribe, administer, or dispense any oral therapeutic agent to any child under twelve years of age, or any oral steroid to any person, without prior consultation with a physician licensed pursuant to chapter 36-4.~~

Signed March 4, 2024

Chapter 156

(House Bill 1013)

An Act to adopt the advanced practice registered nurse compact.

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

Section 1. That a NEW SECTION be added to title 36:

ADVANCED PRACTICE REGISTERED NURSE COMPACT

ARTICLE I

FINDINGS AND DECLARATIONS OF PURPOSE

The party states find that:

(1) The health and safety of the public are affected by the degree of compliance with advanced practice registered nurse licensure requirements and the effectiveness of enforcement activities related to state advanced practice registered nurse licensure laws;

(2) Violations of advanced practice registered nurse licensure and other laws governing the practice of nursing may result in injury or harm to the public;

(3) The expanded mobility of advanced practice registered nurses and the use of advanced communication and intervention technologies, as part of this nation's health care delivery system, require greater coordination and cooperation among states in the areas of advanced practice registered nurse licensure and regulation;

(4) New practice modalities and technology make compliance with individual state advanced practice registered nurse licensure laws difficult and complex;

(5) The current system of duplicative advanced practice registered nurse licensure to authorize practice in multiple states is cumbersome and redundant for healthcare delivery systems, payors, state licensing boards, regulators, and advanced practice registered nurses;

(6) Uniformity of advanced practice registered nurse licensure requirements throughout the states promotes public safety and public health benefits, and provides a mechanism for increasing access to care; and

(7) The general purposes of this Compact are to:

(a) Facilitate the states' responsibility to protect the public's health and safety;

(b) Ensure and encourage the cooperation of party states in the areas

of advanced practice registered nurse licensure and regulation, including the promotion of uniform licensure requirements;

(c) Facilitate the exchange of information between party states in the areas of advanced practice registered nurse regulation, investigation, and adverse actions;

(d) Promote compliance with the laws governing practice by advanced practice registered nurses in each jurisdiction;

(e) Invest all party states with the authority to hold an advanced practice registered nurse accountable for meeting all practice laws of the state in which the patient is located, at the time care is rendered, through the mutual recognition of party-state privileges to practice;

(f) Decrease redundancies in the consideration and issuance of advanced practice registered nurse licenses; and

(g) Provide opportunities for interstate practice by advanced practice registered nurses who meet uniform licensure requirements.

ARTICLE II

DEFINITIONS

Terms used in this Compact mean:

(1) "Advanced practice registered nurse," a registered nurse who:

(a) Has gained additional specialized knowledge, skills, and experience through a program of study recognized or defined by the Interstate Commission of Advanced Practice Registered Nurse Compact Administrators;

(b) Is licensed to perform advanced nursing practice; and

(c) Is licensed in an advanced practice registered nurse role that is congruent with an advanced practice registered nurse educational program, certification, and rules of the commission;

(2) "Advanced practice registered nurse licensure," the regulatory mechanism used by a party-state in granting the authority to practice as an advanced practice registered nurse;

(3) "Advanced practice registered nurse uniform licensure requirements," the minimum uniform licensure, education, and examination requirements set forth in Article III of this Compact;

(4) "Adverse action," any administrative, civil, equitable, or criminal action that:

(a) Is permitted by a state's laws;

(b) Imposed by a licensing board, or other authority, against an advanced practice registered nurse; and

(c) Includes actions against an individual's license or multistate licensure privilege, such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, and any other encumbrance on licensure affecting an advanced practice registered nurse's authorization to practice, including the issuance of a cease and desist action;

(5) "Alternative program," a non-disciplinary monitoring program approved by a licensing board;

(6) "Coordinated licensure information system," an integrated process for collecting, storing and sharing information on advanced practice registered nurse licensure and enforcement activities related to advanced practice registered nurse licensure laws, which is administered by a nonprofit organization composed of and controlled by licensing boards;

(7) "Current significant investigatory information," investigative information that:

(a) A licensing board, after a preliminary inquiry including notification and an opportunity for the advanced practice registered nurse to respond, if required by state law, has reason to believe is not groundless and, if proven true, would indicate more than a minor infraction; or

(b) Indicates that the advanced practice registered nurse represents an immediate threat to public health and safety, regardless of whether the advanced practice registered nurse has been notified and had an opportunity to respond;

(8) "Encumbrance," a revocation or suspension of, or any limitation on, the full and unrestricted practice of nursing, imposed by a licensing board, in connection with a disciplinary proceeding;

(9) "Home state," the party-state that is the advanced practice registered nurse's state of residence;

(10) "Licensing board," a party-state's regulatory body responsible for regulating advanced practice registered nursing;

(11) "Multistate license," a license to practice as an advanced practice registered nurse, that:

(a) Is issued by a home state licensing board; and

(b) Authorizes the holder to practice as an advanced practice registered nurse in all party-states, under a multistate licensure privilege, in the same role and population focus as the holder is licensed in the holder's home state;

(12) "Multistate licensure privilege," an authorization, associated with an advanced practice registered nurse multistate license, that permits the holder to practice as an advanced practice registered nurse in a remote state, in the same role and population focus as the holder is licensed for in the holder's home state;

(13) "Non-controlled prescription drug," a device or drug that:

(a) Is not a controlled substance;

(b) Is prohibited under state or federal law from being dispensed without a prescription; and

(c) Includes a device or drug that bears or is required to bear the legend "Caution: federal law prohibits dispensing without prescription," the legend "prescription only," or any other legend that complies with federal law;

(14) "Party state," a state that has adopted this Compact;

(15) "Population focus," a focus on:

(a) Family or individuals, or both, across the lifespan;

(b) Gerontology;

(c) Pediatrics;

(d) Neonatal care;

(e) Women's health and gender-related care; or

(f) Psychology and mental health;

(16) "Prescriptive authority," the authority to prescribe medications and devices, as defined by party state laws;

(17) "Remote state," a party state that is not the home state;

(18) "Role," the role of a certified registered nurse anesthetist, a certified nurse-midwife, a clinical nurse specialist, or a certified nurse practitioner;

(19) "Single-state license," an advanced practice registered nurse license that:

(a) Is issued by a party state;

(b) Authorizes practice only within the issuing state; and

(c) Does not include licensure privilege to practice in any other party state;

(20) "State," a state, territory, or possession of the United States, and the District of Columbia;

(21) "State practice laws," a party state's laws, rules, and regulations, which:

(a) Govern advanced practice registered nurses;

(b) Define the scope of advanced nursing practice;

(c) Create the methods and grounds for imposing discipline;

(d) Provide for the treatment of prescriptive authority under Article III of this Compact;

(e) Do not include a party state's laws, rules, and regulations requiring supervision or collaboration with a healthcare professional, other than those regarding the prescription of controlled substances; and

(f) Do not include the requirements to obtain and retain an advanced practice registered nurse license, other than the qualifications or requirements of the home state.

ARTICLE III

GENERAL PROVISIONS AND JURISDICTION

A state shall implement procedures for considering the criminal background check of applicants for initial advanced practice registered nurse licensure or licensure by endorsement. The procedures must include the submission of fingerprints or other biometric-based information by an applicant, for the purpose of obtaining the applicant's criminal background information from the Federal Bureau of Investigation and the agency responsible for retaining the state's criminal records.

Each party state shall require that an applicant satisfy the following uniform licensure requirements to obtain, or retain, a multistate license:

(1) Meet the home state's qualifications for licensure or renewal of licensure, and all other applicable state laws;

(2) Complete:

(a) An accredited graduate-level education program that prepares the applicant for one of the four recognized roles and population foci; or

(b) A foreign advanced practice registered nurse education program for one of the four recognized roles and population foci that has been approved by the authorized accrediting body in the applicable country and verified by an independent credentials review agency to be comparable to a licensing board-approved advanced practice registered nurse education program;

(3) If a graduate of a foreign advanced practice registered nurse education program that was not taught in English or if English is not the applicant's native language, successfully pass an English proficiency examination that includes reading, speaking, writing, and listening;

(4) Pass a national certification examination that measures advanced practice registered nurse roles and population-focused competencies, and maintains continued competence, as evidenced by recertification in the role and population focused competencies, through the national certification program;

(5) Holds an active, unencumbered license as a registered nurse and an active, unencumbered authorization to practice as an advanced practice registered nurse;

(6) Passes an NCLEX-RN® examination or a recognized predecessor of that examination;

(7) Practice at least 2,080 hours as an advanced practice registered nurse, in a role and population focus congruent with the applicant's education and training, provided that for purposes of this subdivision, practice does not include hours obtained as part of enrollment in an advanced practice registered nurse education program;

(8) Submits, in connection with an application for initial licensure or licensure by endorsement, fingerprints or other biometric data for the purpose of obtaining criminal background information from the Federal Bureau of Investigation and the agency responsible for retaining the state's criminal records or, if applicable, the foreign country's criminal records;

(9) Has not been convicted of, found guilty of, or entered into an agreed disposition of, a felony offense under applicable state, federal, or foreign criminal law;

(10) Has not been convicted of, found guilty of, or entered into an agreed disposition of, a misdemeanor offense related to the practice of nursing, as determined by factors set forth in rules adopted by the commission;

(11) Is not enrolled in an alternative program;

(12) Is subject to self-disclosure requirements regarding current participation in an alternative program; and

(13) Has a valid United States Social Security number.

An advanced practice registered nurse issued a multistate license must be licensed in an approved role and at least one approved population focus.

An advanced practice registered nurse multistate license issued by a home state to a resident of the state must be recognized by each party state, as authorizing the advanced practice registered nurse to practice as an advanced practice registered nurse in each party state, under a multistate licensure privilege, in the same role and population focus as the advanced practice registered nurse is licensed in the home state.

Nothing in this Compact affects the requirements established by a party state for the issuance of a single-state license, except that an individual may apply for a single-state license, instead of a multistate license, even if otherwise qualified for the multistate license. The failure of an individual to affirmatively opt for a single-state license may result in the issuance of a multistate license.

Issuance of an advanced practice registered nurse multistate license includes prescriptive authority for noncontrolled prescription drugs.

For each state in which an advanced practice registered nurse seeks authority to prescribe controlled substances, the advanced practice registered nurse shall satisfy the requirements imposed by the state in granting, or as applicable, in renewing such authority.

An advanced practice registered nurse issued a multistate license may assume responsibility and accountability for patient care, independently of any supervisory or collaborative relationship. This authority may be exercised in the home state and in any remote state in which the advanced practice registered nurse exercises a multistate licensure privilege.

Each party state may, in accordance with state due process laws, take adverse action against an advanced practice registered nurse's multistate licensure privilege. If a party state takes adverse action, it shall promptly notify the administrator of the coordinated licensure information system. The administrator of the coordinated licensure information system shall promptly notify the home state of any such actions by remote states.

Except as otherwise provided in this Compact, an advanced practice registered nurse practicing in a party state shall comply with the state practice laws of the state in which the client is located at the time service is provided. Advanced practice is not limited to patient care. It may include all advanced nursing practice, as defined by the practice laws of the party state in which the client is located. Practice in a party state under a multistate licensure privilege will subject the advanced practice registered nurse to the jurisdiction of the licensing board, the courts, and the laws of the party state in which the client is located at the time service is provided.

Except as otherwise provided in this Compact, this Compact does not affect additional requirements imposed by states for advanced practice registered nursing. A multistate licensure privilege to practice registered nursing granted by a party state must be recognized by other party states as satisfying any state law requirement for registered nurse licensure, as a precondition for authorization to practice as an advanced practice registered nurse in that state.

An individual not residing in a party state may apply for a party state's single-state advanced practice registered nurse license, as provided under the laws of each party state. A single-state license granted to such an individual does not grant the privilege to practice as an advanced practice registered nurse in any other party state.

ARTICLE IV

APPLICATIONS FOR ADVANCED PRACTICE REGISTERED NURSE LICENSURE IN A PARTY STATE

Upon application for an advanced practice registered nurse multistate license, the licensing board in the issuing party state shall ascertain, through the coordinated licensure information system, whether the applicant has ever held or is the holder of a licensed practical or vocational nursing license, a registered nursing license, or an advanced practice registered nurse license, issued by any other state, whether there are any encumbrances on any license or multistate licensure privilege held by the applicant, whether any adverse action has been taken against any license or multistate licensure privilege held by the applicant, and whether the applicant is currently participating in an alternative program.

An advanced practice registered nurse may hold a multistate advanced practice registered nurse license, issued by the home state, in only one party state at a time.

If an advanced practice registered nurse changes the nurse's home state, the advanced practice registered nurse must apply for advanced practice registered nurse licensure in the nurse's new home state, and the multistate license issued by the prior home state must be deactivated, in accordance with applicable rules of the commission.

An advanced practice registered nurse may apply for licensure in advance of a change in the nurse's home state.

A multistate advanced practice registered nurse license may not be issued by the new home state until the advanced practice registered nurse provides satisfactory evidence of a change to the new home state and satisfies all applicable requirements to obtain a multistate advanced practice registered nurse license from the new home state.

If an advanced practice registered nurse moves from a party state to a non-party state, the advanced practice registered nurse multistate license issued by the prior home state converts to a single-state license, valid only in the former home state.

ARTICLE V

ADDITIONAL AUTHORITIES INVESTED IN PARTY STATE LICENSING BOARDS

In addition to other powers conferred by state law, a licensing board may:

(1) Take adverse action against an advanced practice registered nurse’s multistate licensure privilege to practice within that party state, provided:

(a) Only the home state may take adverse action against an advanced practice registered nurse’s license issued by the home state; and

(b) For purposes of taking adverse action, the home state licensing board shall give the same priority and effect to reported conduct that occurred outside of the home state as it would if such conduct had occurred within the home state, and in so doing, the home state shall apply its state laws to determine appropriate action;

(2) Issue cease and desist orders or impose an encumbrance on an advanced practice registered nurse’s authority to practice within that party state;

(3) Complete any pending investigations of an advanced practice registered nurse who changes the nurse's state of residence during the course of an investigation, take appropriate action, and promptly report the

conclusions of an investigation to the administrator of the coordinated licensure information system, who shall promptly notify the new home state of any such actions;

(4) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses, and the production of evidence, provided:

(a) Subpoenas issued by a party state licensing board for the attendance and testimony of witnesses or the production of evidence from another party state must be enforced in the latter state by a court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings; and

(b) The licensing board issuing a subpoena shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the state in which the witnesses or evidence are located;

(5) For an advanced practice registered nurse licensure applicant, obtain and submit fingerprints or other biometric-based information to the Federal Bureau of Investigation for criminal history checks, receive the results from the Federal Bureau of Investigation, and use the results in making licensure decisions;

(6) If permitted by state law, recover from the affected advanced practice registered nurse the costs of investigations and disposition of cases resulting from any adverse action taken against the advanced practice registered nurse; and

(7) Take adverse action based on the factual findings of another party state, provided that the licensing board follows its own procedures for taking such adverse action.

If adverse action is taken by a home state against an advanced practice registered nurse's multistate licensure, the privilege to practice in all other party states under a multistate licensure privilege is deactivated, until all encumbrances have been removed from the advanced practice registered nurse's multistate license. All home state disciplinary orders that impose adverse action against an advanced practice registered nurse's multistate license must include a statement that the advanced practice registered nurse's multistate licensure privilege is deactivated in all party states during the pendency of the order.

Nothing in this Compact overrides a party state's decision that participation in an alternative program may be used in lieu of adverse action. The home state licensing board shall deactivate the multistate licensure privilege under the multistate license of any advanced practice registered nurse for the duration of the advanced practice registered nurse's participation in an alternative program.

ARTICLE VI

COORDINATED LICENSURE INFORMATION SYSTEM AND EXCHANGE OF INFORMATION

All party states shall participate in a coordinated licensure information system of all advanced practice registered nurses, licensed registered nurses, and licensed practical or vocational nurses. This system must include information on the licensure and disciplinary history of each advanced practice registered nurse, as submitted by party states, to assist in the coordinated administration of advanced practice registered nurse licensure and enforcement efforts.

The commission, in consultation with the administrator of the coordinated licensure information system, shall formulate procedures for the identification, collection, and exchange of information under this Compact.

Each licensing board shall promptly report to the coordinated licensure information system any adverse action, any current significant investigative information, denials of applications and the reason for the denials, and advanced practice registered nurse participation in an alternative program known to the licensing board, regardless of whether the participation is deemed nonpublic or confidential under state law.

Notwithstanding any other law, any party state licensing board contributing information to the coordinated licensure information system may designate information that may not be shared with non-party states or disclosed to others without the permission of the contributing state.

Any personally identifiable information obtained from the coordinated licensure information system by a party state licensing board may not be shared with non-party states or disclosed to others, except to the extent permitted by the laws of the party state contributing the information.

Any information that is contributed to the coordinated licensure information system and subsequently required to be expunged by the laws of the party state contributing the information must be removed from the coordinated licensure information system.

The Compact administrator of each party state shall furnish a uniform data set to the Compact administrator of each other party state, which must include:

(1) Identifying information;

(2) Licensure data;

(3) Information related to alternative program participation; and

(4) Information that may facilitate the administration of this Compact, as determined by rules of the commission.

The Compact administrator of a party state shall provide all investigative documents and information requested by another party state.

ARTICLE VII

ESTABLISHMENT OF THE INTERSTATE COMMISSION OF ADVANCED PRACTICE REGISTERED NURSE COMPACT ADMINISTRATORS

The party states hereby create and establish a joint public agency known as the Interstate Commission of Advanced Practice Registered Nurse Compact Administrators.

The commission is an instrumentality of the party states.

Venue is proper, and judicial proceedings by or against the commission must be brought in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

Nothing in this Compact may be construed to waive sovereign immunity.

Each party state shall have one administrator. The head of the state licensing board or a designee is the administrator of this Compact for each party state. An administrator may be removed or suspended from office, as provided by the law of the state from which the administrator is appointed. Any vacancy

occurring in the commission must be filled in accordance with the laws of the party state in which the vacancy exists.

Each administrator has one vote regarding the promulgation of rules and the creation of the bylaws. Each administrator may participate in the business and affairs of the commission. An administrator shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for an administrator's participation in meetings by telephone or other means of communication.

The commission shall meet at least once during each calendar year. Additional meetings may be held, as set forth in the bylaws or rules of the commission.

All meetings of the commission are open to the public. Public notice of each meeting must be given in accordance with the rulemaking provisions in Article VIII of this Compact.

The commission may convene in a closed, nonpublic meeting to discuss:

(1) A party state's noncompliance with its obligations under this Compact;

(2) The employment, compensation, discipline, or other personnel matters, practices or procedures, related to a specific employee, or matters related to the commission's internal personnel practices and procedures;

(3) Current, threatened, or reasonably anticipated litigation;

(4) The negotiation of contracts for the purchase or sale of goods, services, or real estate;

(5) Accusing any person of a crime or formally censuring any person;

(6) The disclosure of trade secrets, or commercial or financial information that is privileged or confidential;

(7) The disclosure of information that is personal in nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(8) The disclosure of investigatory records compiled for law enforcement purposes;

(9) The disclosure of information related to any reports prepared by or on behalf of the commission for the purpose of investigating compliance with this Compact; or

(10) Matters specifically exempted from disclosure by federal or state statute.

If a meeting or portion of a meeting is closed pursuant to this Article, the commission's legal counsel or designee must certify that the meeting may be closed and must reference each relevant exempting provision. The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed. All documents considered in connection with an action must be identified in the minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or by court order.

The commission shall, by a majority vote of the administrators, prescribe bylaws or rules to govern its conduct, as necessary or appropriate to carry out the purposes and exercise the powers of this Compact, including: establishing the fiscal year of the commission; providing reasonable standards and procedures for the establishment and meetings of committees and for the general or specific delegation of any authority or function of the commission; establishing procedures for calling and conducting meetings of the commission, ensuring advance notice of

all meetings, and providing an opportunity for attendance at meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and proprietary information, including trade secrets.

The commission may meet in closed session only after a majority of the administrators vote to close a meeting, in whole or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting, revealing the vote of each administrator. No proxy votes are allowed.

The commission shall, by a majority vote of the administrators, establish the titles, duties, and authority and procedures for the election of the commission's officers; and provide standards and procedures for the establishment of personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any party state, the bylaws exclusively govern the personnel policies and programs of the commission.

The commission shall, by a majority vote of the administrators, provide a mechanism for winding up the operations of the commission and for the equitable disposition of any surplus funds that may exist after the termination of this Compact and the payment or reserving of its debts and obligations.

The commission shall publish its bylaws and rules, and any amendments to the bylaws or rules, in a convenient form on the website of the commission; maintain its financial records in accordance with the bylaws; and meet and take such actions as are consistent with this Compact and the bylaws.

The commission may promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact and any rules so promulgated have the force and effect of law and are binding in all party states.

The commission may bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any licensing board to sue or be sued under applicable law is not be affected.

The commission may purchase and maintain insurance and bonds.

The commission may borrow, accept, or contract for services of personnel, including employees of a party state or a nonprofit organization.

The commission may cooperate with any other organization that administers state compacts related to the regulation of nursing, including the sharing of administrative or staff expenses, office space, and other resources.

The commission may hire employees, elect or appoint officers, fix compensation, define duties, and grant such individuals the authority to carry out the purposes of this Compact and the authority to establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters.

The commission may accept donations, grants, and gifts of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same, provided the commission strives to avoid any appearance of impropriety or conflict of interest.

The commission may lease, purchase, accept gifts or donations of, or otherwise own, hold, improve, or use, any property, whether real or personal, provided the commission strives to avoid any appearance of impropriety.

The commission may sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, whether real or personal.

The commission may establish a budget and make expenditures.

The commission may borrow money.

The commission may appoint committees, including advisory committees comprised of administrators, state nursing regulators, state legislators or their representatives, consumer representatives, and other interested persons.

The commission may issue advisory opinions.

The commission may provide and receive information from, and cooperate with, law enforcement agencies.

The commission may adopt and use an official seal.

The commission may perform other functions as necessary or appropriate to achieve the purposes of this Compact, consistent with the state regulation of advanced practice registered nurse licensure and practice.

The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

The commission may levy on and collect an annual assessment from each party state to cover the cost of its operations, activities, and staff, in its annual budget as approved each year.

The aggregate annual assessment amount, if any, must be allocated based upon a formula to be determined by the commission, which shall promulgate a rule that is binding upon all party states.

The commission may not incur obligations of any kind prior to securing the funds adequate to meet the same, nor may the commission pledge the credit of any party state, except by, and with the authority of, such party state.

The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission are subject to the audit and accounting procedures established under the bylaws of the commission. All receipts and the disbursement of moneys handled by the commission must be audited annually, by a certified or licensed public accountant, and the report of the audit must be included in and become part of the annual report of the commission.

The administrators, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission, that occurred or which the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities, provided that nothing in this paragraph may be construed to protect any such person from suit or liability for any damage, loss, injury, or liability, caused by the intentional, willful, or wanton misconduct of that person.

The commission shall defend any administrator, officer, executive director, employee, or representative of the commission, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission, that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this paragraph may be construed to prohibit that person from retaining the person's own counsel, and further provided that the actual or alleged act, error, or omission did not result from that person’s intentional, willful, or wanton misconduct.

The commission shall indemnify and hold harmless any administrator, officer, executive director, employee, or representative of the commission, for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional, willful, or wanton misconduct of that person.

ARTICLE VIII

RULEMAKING

The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the rules adopted hereunder. Rules and amendments become binding as of the date specified in each and have the same force and effect as provisions of this Compact.

Rules and amendments to the rules must be adopted at a regular or special meeting of the commission.

Before promulgation and adoption of a final rule or any rule by the commission, and at least sixty days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a notice of proposed rulemaking on the commission's website and on the website of each licensing board or in the publication in which each state would otherwise publish proposed rules.

The notice of proposed rulemaking must include:

(1) The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

(2) The text of the proposed rule, and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person; and

(4) The manner in which a person may submit notice to the commission of the person's intention to attend the public hearing and any written comments.

Before the adoption of a proposed rule or amendment, the commission shall allow persons to submit written data, facts, opinions, and arguments, which must be made available to the public.

The commission shall grant an opportunity for a public hearing before it adopts a rule or amendment.

The commission shall publish the place, time, and date of the public hearing. A public hearing must be conducted in a manner that provides each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing. Each hearing must be recorded, and a copy of the recording must be made available upon request.

Nothing in this Article requires a separate hearing on each rule. Rules may be grouped, at hearings required by this section, for the convenience of the commission.

If no one appears at the public hearing, the commission may proceed with promulgation of the proposed rule.

Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the commission shall consider all written and oral comments received.

The commission shall, by majority vote of all administrators, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

Upon determination that an emergency exists, the commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this Compact and in this section are retroactively applied to the rule, as soon as reasonably possible, but not later than ninety days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately, in order to meet an imminent threat to public health, safety or welfare, prevent a loss of commission or party state moneys, or meet a deadline for the promulgation of an administrative rule that is established by federal law or regulation.

The commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in formatting, errors in consistency, or grammatical errors. Public notice of any revisions must be posted on the website of the commission. A revision may be challenged by any person for a period of thirty days after the revision is posted. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge must be made in writing, and delivered to the commission, before the end of the notice period. If no challenge is made, the revision takes effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

ARTICLE IX

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

Each party state shall enforce this Compact and take all actions necessary and appropriate to effectuate this Compact's purposes and intent.

The commission may receive service of process in any proceeding that may affect the powers, responsibilities, or actions of the commission, and has standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the commission renders a judgment or order void as to the commission, this Compact, or promulgated rules.

If the commission determines that a party state has defaulted in the performance of its obligations or responsibilities under this Compact or under the promulgated rules, the commission shall provide written notice to the defaulting state and other party states of the nature of the default, the proposed means of curing the default, and any other action to be taken by the commission and shall provide remedial training and specific technical assistance regarding the default.

If a state in default fails to cure the default, the defaulting state's membership in the Compact may be terminated upon an affirmative vote of a majority of the administrators, and all rights, privileges, and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

Termination of membership in this Compact may be imposed only after all other means of securing compliance have been exhausted. Notice of the intent to suspend or terminate membership must be given by the commission to the Governor of the defaulting state and to the executive officer of the defaulting

state's licensing board, the defaulting state's licensing board, and each of the party states.

A state whose membership in this Compact has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

The commission may not bear any costs related to a state that is found to be in default or whose membership in this Compact has been terminated, unless agreed upon, in writing, between the commission and the defaulting state.

A defaulting state may appeal the action of the commission by petitioning the United States District Court for the District of Columbia or for the federal district in which the commission has its principal offices. The prevailing party must be awarded all costs of the litigation, including reasonable attorneys' fees.

At the request of a party state, the commission shall attempt to resolve a dispute that is related to the Compact and which arises among party states or between party and non-party states.

The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes, as appropriate.

If the commission cannot resolve a dispute among party states arising under this Compact, the party states may submit the issues in dispute to an arbitration panel, comprised of individuals appointed by the Compact administrator in each of the affected party states and an individual mutually agreed upon by the Compact administrators of all the party states involved in the dispute. A decision by a majority of the arbitrators is final and binding.

The commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this Compact.

To enforce compliance with this Compact, its bylaws, and rules promulgated under this Compact, against a party state that is in default, the commission may, by majority vote, initiate legal action in the United States District Court for the District of Columbia or the federal district in which the commission has its principal offices. The relief sought may include both injunctive relief and damages. If judicial enforcement is necessary, the prevailing party must be awarded all costs of the litigation, including reasonable attorneys' fees.

The remedies provided for in this Article are not the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

ARTICLE X

EFFECTIVE DATE, WITHDRAWAL AND AMENDMENT

When enacted into law, in seven party states, this Compact becomes effective for the limited purpose of establishing and convening the commission to adopt rules related to its operation.

Any state that joins the Compact after the commission's initial adoption of the advanced practice registered nurse uniform licensure requirements is subject to all rules that have been previously adopted by the commission.

A party state may withdraw from this Compact by enacting a statute that repeals the Compact. A party state's withdrawal is not effective until six months after enactment of the repealing statute.

A party state's withdrawal or termination does not affect the continuing requirement of the withdrawing or terminated state's licensing board to report

adverse actions and significant investigations occurring prior to the effective date of the withdrawal or termination.

Nothing contained in this Compact invalidates or prevents any advanced practice registered nurse licensure agreement or other cooperative arrangement between a party state and a non-party state, provided the agreement or arrangement does not conflict with this Compact.

This Compact may be amended by the party states. No amendment to this Compact is effective and binding upon any party state until it is enacted into law by all the party states. Representatives of non-party states to this Compact shall be invited to participate in the activities of the commission, on a nonvoting basis, prior to the adoption of this Compact by all states.

ARTICLE XI

CONSTRUCTION AND SEVERABILITY

This Compact must be liberally construed so as to effectuate its purposes. The provisions of this Compact are severable and, if any portion of this Compact is declared to be contrary to the constitution of any party state or of the United States, or if the applicability thereof, to any government, agency, person, or circumstance, is held invalid, the validity of the remainder of this Compact and its applicability is not affected.

If this Compact is held to be contrary to the constitution of any party state, this Compact must remain in full force and effect, as to the remaining party states, and in full force and effect as to the party state affected, as to all severable matters.

Signed February 5, 2024

Chapter 157

(House Bill 1233)

An Act to amend requirements for a cosmetology apprenticeship.

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

Section 1. That § 36-15-1 be AMENDED:

36-15-1. Terms used in this chapter mean:

(1) "Apprentice," any person licensed by the commission to receive education through an apprenticeship in a salon;

(2) "Apprentice salon," any salon licensed by the commission to teach apprentices;

(3) "Booth," any part within a licensed salon that is rented or leased for the purpose of rendering licensed cosmetology services as a separate, independent salon business;

(4) "Commission," the Cosmetology Commission as established and created in § 36-15-3;

(5) "Cosmetologist," any person who, for compensation, engages in any of the practices of cosmetology;

(6) "Cosmetology," any one or any combination of the practices set forth in § 36-15-2;

(7) "Demonstrator," any person licensed to practice cosmetology, nail technology, or esthetics in this state, in another state, or in another country, who demonstrates the various practices of cosmetology, as applicable, in order to inform or educate other licensees or the public;

(8) "Esthetician," any person who, for compensation, engages in the practice of esthetics, but not in other practices of cosmetology;

(9) "Esthetics," any one or any combination of the practices set forth in § 36-15-2.2;

(10) "Instructor," any person who is licensed by the commission to instruct in a school or an apprentice salon and who meets the requirements set forth in § 36-15-25;

(11) "Nail technology," any one or any combination of the practices set forth in § 36-15-17.2;

(12) "Nail technician," any person who, for compensation, engages in the practice of nail technology, but not in other practices of cosmetology;

(13) "Natural hair braiding," any one or any combination of the practices set forth in § 36-15-1.1;

(14) "Salon," any place, premise, or building or any part of a building operated for the purpose of engaging in the practice of cosmetology, nail technology, or esthetics, or any combination of these practices;

(15) "School," any place, premise, or building that is licensed by the commission to provide education to students in the practice of cosmetology, nail technology, or esthetics, or any combination of these practices;

(16) "School premises," any permanent building or other structures approved by the commission as a school campus under one school license; and

(17) "Student," any person who is licensed by the commission to receive education in a licensed school.

Section 2. That § 36-15-25 be AMENDED:

36-15-25. No person may teach in a school or an apprentice salon unless that person is licensed by the commission as an instructor. Any person may qualify and be licensed by the commission as an instructor for cosmetology, nail technology, or esthetics, as applicable, upon application made to the commission. The application ~~shall~~ must be accompanied by satisfactory evidence that the applicant:

(1) Possesses the qualifications required by § 36-15-15;

(2) Currently holds a valid cosmetologist, nail technician, or esthetician license, as applicable;

(3) Has complied with any instructor education as prescribed by § 36-15-26.2 or has at least one year of teaching experience as a licensed instructor from another state in cosmetology, nail technology, or esthetics, as applicable; and

(4) Has passed an examination prescribed by the commission.

However, the applicant may receive the license conditionally, dependent on completing instructor education and passing the examination as prescribed by the commission in rules adopted pursuant to chapter 1-26.

An instructor with a cosmetologist license may instruct in any practice of cosmetology. An instructor with a nail technician license may only instruct in the practice of nail technology. An instructor with an esthetician license may only instruct in the practice of esthetics.

The commission may promulgate rules, pursuant to chapter 1-26, to establish education and experience requirements for a person to serve as a substitute instructor.

Section 3. That § 36-15-42.1 be AMENDED:

36-15-42.1. ~~No~~ A salon may not offer apprenticeship education without obtaining an apprentice salon license. The owner of the salon may apply to the commission to be licensed as an apprentice salon if:

(1) The salon meets the applicable requirements of this chapter and rules promulgated pursuant to this chapter;

(2) The salon has passed the annual inspection for the current year; and

(3) The application is accompanied by the fee required in this chapter.

The apprentice salon license ~~is valid for the length of the apprenticeship as stated in § 36-15-45. If the apprenticeship period extends longer than the length of hours in § 36-15-45, as applicable, then the apprentice salon license shall be renewed. The commission may grant an extension of the license for good cause. The commission shall define good cause by rules promulgated pursuant to chapter 1-26~~ expires one year from the date of issuance and is renewable annually. The renewal application must be accompanied by the fee required in this chapter.

Section 4. That § 36-15-44 be AMENDED:

36-15-44. An apprentice salon may have up to eight apprentices not to exceed two apprentices per instructor ~~during any one period of time~~.

Section 5. That § 36-15-47 be AMENDED:

36-15-47. Any apprentice licensed pursuant to this chapter may practice cosmetology if the practice is performed only in a cosmetology, esthetics, or nail salon, as applicable, licensed pursuant to this chapter; the apprentice is under the constant supervision, control, and direction of a licensed instructor at all times; and the apprentice is actually engaged in the study and practice of cosmetology, esthetics, or nail technology at least forty hours a week. At the election of the apprentice, the apprenticeship may be pursued on a part-time basis, with a minimum of twenty hours per week. The apprentice may elect to revert to full-time status at any time by notifying the commission at least fifteen days prior to the change taking effect.

Section 6. That § 36-15-48 be AMENDED:

36-15-48. The commission ~~may~~ shall adopt reasonable rules pursuant to chapter 1-26 pertaining to a report on the apprentice's progress and education received ~~by any apprentice required of the~~ from a licensed instructor ~~under whom the apprentice is being supervised~~.

Section 7. That a NEW SECTION be added to chapter 36-15:

A licensed apprentice who has completed hours in cosmetology, esthetics, or nail technology may apply the completed hours towards meeting the curriculum requirements of another apprentice program if the completed hours meet the requirements of the other program.

Section 8. That a NEW SECTION be added to chapter 36-15:

A person who has completed hours under an apprenticeship or at a licensed school may have those completed hours be transferable between an apprenticeship, program, or school if allowed by the institution to which the person is transferring.

Signed March 13, 2024

Chapter 158

(Senate Bill 81)

An Act to expand permission on installing electric wiring in a residence.

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

Section 1. That § 36-16-15 be AMENDED:

36-16-15. No license is required of a person installing electric wiring in or on:

(1) The person's own residence, including attached or unattached accessory structures and the parcel of land upon which the structures are situated;

(2) The person's own farmstead;

(3) The premises of a single-family dwelling unit that is in the process of being constructed if the person owns the premises and intends to occupy the premises as the person's residence when construction is complete; or

(4) The premises of any private, non-habitable property owned by the person that is not substantially used in connection with a trade or business of the person.

Entrance installations in excess of sixty amperes capacity, circuits, or the installation of electrical parts of other apparatus shall be subject to inspection and payment of an inspection fee as provided by §§ 36-16-29 and 36-16-30. Failure to report this work as required by law is a Class 2 misdemeanor.

The commission shall promulgate rules, pursuant to chapter 1-26, to establish criteria for authorizing persons to install electric wiring under this section.

For the purposes of this section, the term "residence" means a detached owner-occupied single-family dwelling.

Signed March 4, 2024

Chapter 159

(House Bill 1029)

An Act to modify and repeal provisions related to the licensure of hearing aid dispensers and audiologists.

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

Section 1. That § 36-24-1 be AMENDED:

36-24-1. Terms used in this chapter mean:

(1) "Audiogram," a graphic summary of the measurements of hearing loss showing number of decibels loss at each frequency tested;

(2) "Audiologist," any person who is engaged in the practice of audiology and licensed pursuant to this chapter;

(3) "Audiology," the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders;

~~(3)~~(4) "Auditory brain stem implant," a surgically implanted device that provides perception of sound via stimulation to the brainstem to a person who has significant sensorineural hearing loss in which stimulation at the auditory nerve is no longer a viable option;

(5) "Auditory osseointegrated device," a device, including surgical and non-surgical wearing options, that delivers sound to the inner ear by bypassing the outer and middle ear via bone conduction;

(6) "Board," the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists;

~~(4)~~(7) "Cochlear implant," a surgically implanted device that provides perception of sound via stimulation to the cochlea to a person who has sensorineural hearing loss and to whom benefits from a hearing aid are limited;

(8) "Disorders of human hearing, balance, and other neural systems," any condition or auditory sensitivity, acuity, function, or processing disorder, whether of organic or nonorganic origin, peripheral or central, that impedes the normal function of balance or normal process of human communication ~~including disorders of auditory sensitivity, acuity, function, or processing~~;

~~(5)~~(9) "Dispense," any transfer of title, possession, or of the right to use by lease, bailment, or any other contract, excluding wholesale transactions with a distributor or dealer;

(10) "Hearing aid," a wearable instrument, device, or ear mold, and any of its parts, attachments, or accessories, designed for, offered for the purpose of, or represented as aiding a person with, or compensating for, impaired hearing. The term does not include:

(a) Batteries or cords; or

(b) Cochlear implants or cochlear prosthesis;

~~(6)~~(11) "Licensed hearing aid dispenser," any person, other than an audiologist, who is engaged in the practice of hearing aid dispensing and who is licensed pursuant to this chapter;

~~"License," any license issued by the board to dispense hearing aids or practice audiology;~~ and

~~(7)~~(12) "Provisional license," any license ~~issued to an applicant who is practicing audiology while completing the postgraduate professional experience as required by this chapter or a license~~ issued to ~~an applicant as~~ a person who is training to be a licensed hearing aid dispenser ~~trainee~~ and who is supervised by a person who holds a valid hearing aid dispensing license or audiology license~~;~~

~~(8) "Supervisor," any person who is licensed and accepts the responsibility of overseeing the training of provisional licensees in their respective professions~~.

Section 2. That § 36-24-1.6 be AMENDED:

36-24-1.6. The scope of practice of audiology ~~includes~~ involves:

(1) Activities that identify, assess, diagnose, manage, and interpret test results related to disorders of human hearing, balance, and other neural systems;

(2) ~~Otoscopic examination and external ear canal management for removal~~Management of cerumen in order to evaluate hearing or balance, make ear impressions, fit hearing protection or prosthetic devices, and monitor the continuous use of hearing aids;

(3) The conduct and interpretation of behavioral, electroacoustic, or electrophysiologic methods used to assess hearing, balance, and neural system function;

(4) Evaluation and ~~management~~ treatment of children and adults with central auditory processing disorders;

(5) Supervision and conduct of newborn hearing screening programs;

(6) Measurement and interpretation of sensory and motor evoked potentials, electromyography, and other electrodiagnostic tests for purposes of neurophysiologic intraoperative monitoring and cranial nerve assessment;

(7) Provision of hearing care by selecting, evaluating, fitting, facilitating adjustment to, and dispensing prosthetic devices ~~for hearing loss, including,~~ hearing aids, sensory aids, hearing assistive devices, alerting and telecommunication systems, and captioning devices for hearing loss;

(8) Assessment of the candidacy of persons with hearing loss for a cochlear ~~implants and~~ implant, auditory osseointegreated device, or auditory brainstem implant, the provision of fitting~~,~~ and programming the device or implant, and the provision of audiological rehabilitation to optimize device or implant use;

(9) Provision of audiological rehabilitation~~,~~ including speech reading, communication management, language development, auditory skill development, and counseling for psychosocial adjustment to hearing loss for persons with hearing loss and their families or caregivers;

(10) Consultation to educators as members of interdisciplinary teams about communication management, educational implications of hearing loss, educational programming, classroom acoustics, and large-area amplification systems for children with hearing loss;

(11) Prevention of hearing loss and conservation of hearing function by designing, implementing, and coordinating occupational, school, and

community hearing conservation and identification programs;

(12) Consultation and provision of rehabilitation to persons with balance disorders using habituation, exercise therapy, and balance retraining;

(13) Design and conduct of basic and applied audiologic research to increase the knowledge base, to develop new methods and programs, and to determine the efficacy of assessment and treatment paradigms~~,~~; and the dissemination of research findings to other professionals and to the public. For the purpose of this chapter, the term "research" does not include activities that take place under the auspices of a recognized institutional review board;

(14) Education and administration in audiology graduate and professional education programs;

(15) Measurement of functional outcomes, consumer satisfaction, effectiveness, efficiency, and cost-benefit of practices and programs to maintain and improve the quality of audiological services;

(16) Administration and supervision of professional and technical personnel who provide support functions to the practice of audiology;

(17) Screening of ~~speech language, use of sign language, and other~~ factors affecting communication function for the purposes of an audiological evaluation or initial identification of individuals with other communication disorders;

(18) Consultation about accessibility for persons with hearing loss in public and private buildings, programs, and services;

(19) Assessment and nonmedical management of tinnitus ~~using biofeedback, masking, hearing aids, education, and counseling~~;

(20) Consultation to individuals, public and private agencies, and governmental bodies, or as an expert witness, regarding legal interpretations of audiology findings, effects of hearing loss and balance system disorders, and relevant noise-related considerations;

(21) Case management and service as a liaison for consumers, families, and agencies in order to monitor audiologic status and management and to make recommendations about educational and vocational programming;

(22) Consultation to industry on the development of products and instrumentation related to the measurement and management of auditory or balance function; and

(23) Participation in the development of professional and technical standards.

Section 3. That chapter 36-24 be amended with a NEW SECTION:

The scope of practice of licensed hearing aid dispensing involves:

(1) The evaluation or measurement of hearing in a patient eighteen years or older, by means of an audiometer, for the sole purpose of determining whether a hearing loss will be sufficiently improved by the use of a hearing aid or other hearing instrument to justify prescribing and selling the hearing aid or instrument, and whether that hearing aid or instrument will be in the best interest of the patient;

(2) The prescribing and fitting of an appropriate hearing aid or other hearing instrument based on a patient's hearing loss, ear anatomy, and physical considerations;

(3) The removal of cerumen only as needed when cerumen is impeding the fitting, verification, or function of a hearing aid or other hearing instrument;

(4) The making of impressions or earmolds for the fitting of a hearing aid or other hearing instrument or hearing protection;

(5) The sale and professional placement of the hearing aid or other hearing instrument on a patient;

(6) Intervention necessary to ensure the optimum improvement in hearing ability when utilizing a hearing aid or other hearing instrument;

(7) The education of a patient on the use and care of the hearing aid or other hearing instrument; and

(8) Referring a patient to an appropriate medical professional for any ear-related condition that is observed beyond recognized sensorineural hearing loss.

Section 4. That § 36-24-2 be AMENDED:

36-24-2. There is ~~hereby~~ created the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists ~~with the duties and powers as provided in this chapter~~. The board consists of:

(1) Two audiologists with at least two years of experience practicing audiology;

(2) Two licensed hearing aid dispensers with at least two years of experience in the practice of fitting and dispensing hearing aids; and

(3) One person who is a representative of the public and who is not associated with or financially interested in the practice or business of licensed hearing aid dispensing or audiology and who is not a member of a related profession or occupation.

The Governor shall appoint each member of the board.

Section 5. That § 36-24-5 be AMENDED:

36-24-5. ~~Board members shall be appointed for a~~ The term of office for each member of the board is three years. Each member shall serve until a successor has been appointed.

The ~~terms of members begin~~ term of a member begins on October thirty-first of the calendar year in which the Governor appoints the member, unless otherwise designated by the Governor. The ~~appointee's~~ term expires on October thirtieth in the third year of appointment.

~~Any member's term ending June 30, 2013, or thereafter is extended to October thirtieth in the year the term is to expire~~

A member may not serve more than three consecutive, full terms. If a member's office is vacant, the Governor must appoint a new member to complete the unexpired term. A member who is appointed to fill an unexpired term is not considered to have served a full term.

Section 6. That § 36-24-8 be AMENDED:

36-24-8. The ~~members of the~~ board shall annually elect ~~one such member as chairman and another~~ one member to serve as ~~secretary-treasurer of the board~~ president and one member to serve as vice-president.

Section 7. That § 36-24-9 be AMENDED:

36-24-9. The board shall ~~meet at least once in each fiscal year to conduct business~~ hold at least two meetings annually at a place and time ~~it determines~~ set by the board. ~~Additional meetings may be convened at the call of the chair to carry out the purposes of this chapter. Four members of the board constitute a quorum to conduct business~~ The board may hold other meetings at a time and place set by the president or a majority of the board.

A majority of the board constitutes a quorum. Except as provided in § 36-24-41, a majority vote of members present constitutes a decision of the board.

Section 8. That § 36-24-9.1 be AMENDED:

36-24-9.1. Each board member shall receive a per diem set pursuant to § 4-7-10.4 and ~~expenses at the same rate as other state employees~~ may be reimbursed for expenses as provided by law while ~~actually~~ engaged in official duties. ~~The board, pursuant to chapter 3-6D, may hire office personnel necessary to perform the board's official duties.~~

Section 9. That § 36-24-10.1 be AMENDED:

36-24-10.1. The ~~South Dakota Board of Hearing Aid Dispensers and Audiologists~~ board shall continue within the Department of Health~~,~~ and shall retain all its prescribed functions, including administrative functions. The board shall submit ~~such~~ records, information, and reports in the form and at ~~such~~ the times ~~as~~ required by the secretary of health. ~~However, the~~ The board shall report to the secretary at least annually.

Section 10. That § 36-24-11 be AMENDED:

36-24-11. All moneys coming into the custody of the board~~, including license fees, renewal fees, penalty fees, reciprocity fees, late fees, and any other payments, shall~~ must be paid by the board to the state treasurer ~~on or before the tenth day of each month, and shall consist of all moneys received by the board during the preceding calendar month~~. The state treasurer shall credit the moneys to the ~~South Dakota~~ Board of Licensed Hearing Aid Dispensers and Audiologists account of the general fund, which account is hereby created. The moneys in the account are hereby continuously appropriated to the board for the purpose of paying the expense of administering and enforcing the provisions of this chapter. The total expenses incurred by the board may not exceed the total moneys collected.

Section 11. That § 36-24-12.1 be AMENDED:

36-24-12.1. The board may:

(1) ~~Authorize all disbursements necessary to carry out the provisions of this chapter;~~

~~(2) Administer, coordinate, and enforce the provisions of this chapter, establish licensure fees, evaluate the qualifications of applicants, and issue and renew licenses;~~

~~(3) Prepare, administer, conduct, and supervise the qualifying examinations to test the knowledge and proficiency of hearing aid dispensers, and provide facilities necessary to carry out these examinations;~~

~~(4) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;~~

~~(5) Issue subpoenas, examine witnesses, administer oaths, conduct hearings and, at its discretion, investigate allegations of violations of this chapter and impose penalties if such violations of this chapter have occurred;~~

~~(6) Maintain a list of persons currently licensed and registered under the provision of this chapter and the clock hours of continuing education submitted by each person;~~

~~(7) Employ personnel as determined by its needs and budget;~~

~~(8) Request legal advice and assistance, as needed, from the Attorney General's Office;~~

~~(9) Enter into contracts as necessary to carry out its responsibilities under this chapter;~~

~~(10) Hire legal counsel, if necessary;~~

~~(11) Establish a budget;~~

~~(12) Submit reports of its operations and finances as requested by the Department of Health;~~

~~(13) Adopt an official seal by which it may authenticate its proceedings, copies of proceedings, records, acts of the board, and licenses;~~

~~(14) Communicate disciplinary actions to relevant state and federal authorities and to other state audiology licensing authorities as necessary;~~

~~(15) Establish continuing education requirements;~~

~~(16) Establish peer review committees within each discipline for review purposes~~ Establish educational, training, and competency standards governing the examination and practice of licensees using board-approved national accrediting agencies and accepted nationally established standards, if applicable;

(2) Examine an eligible applicant for a hearing aid dispensing license;

(3) Issue a license to an applicant who has met the licensure requirements of this chapter and renew the licenses of audiologists and hearing aid dispensers who meet the renewal requirements for licensure of this chapter;

(4) Establish continuing education requirements;

(5) Establish a budget;

(6) Establish peer review committees for audiologists and licensed hearing aid dispensers for review purposes;

(7) Employ personnel in accordance with the needs and budget of the board;

(8) Establish and collect fees as provided for by this chapter;

(9) Enter into contracts as necessary to carry out the board's responsibilities pursuant to the provisions of this chapter;

(10) Revoke, suspend, refuse to issue or renew a license, issue a letter of reprimand or concern, require restitution of fees, or impose probationary conditions in the manner provided in this chapter;

(11) Issue subpoenas, examine witnesses, administer oaths, conduct hearings, and investigate allegations, in accordance with chapter 36-1C, of violations of this chapter and impose penalties if such violations of this chapter have occurred;

(12) Communicate disciplinary actions and licensure status to relevant state and federal governing bodies as may be required, including the National Practitioner Data Bank; and

(13) Carry out the purposes and enforce the provisions of this chapter.

Section 12. That § 36-24-17.2 be AMENDED:

36-24-17.2. ~~Any applicant for licensure~~ To be eligible for a license to practice hearing aid dispensing ~~shall~~, a person must:

(1) ~~Be of good moral character~~Submit an application on a form prescribed by the board;

(2) Submit an application fee, in an amount established by the board in rule promulgated pursuant to chapter 1-26, but not exceeding three hundred fifty dollars;

(3) Be eighteen years of age or older;

~~(3)~~(4) Be a high school graduate or the equivalent; ~~and~~

~~(4)~~(5) Pass ~~an~~ a national examination approved by the board;

(6) Pass a practicum examination approved by the board; and

(7) Have not committed an act for which disciplinary action may be justified.

~~The applicant may not be the holder of an audiology license.~~

Section 13. That § 36-24-17.3 be AMENDED:

36-24-17.3. To be eligible for licensure by the board as an audiologist, ~~the applicant shall~~ a person must:

(1) ~~Be of good moral character~~Submit an application on a form prescribed by the board;

(2) Submit an application fee, in an amount established by the board in rule promulgated pursuant to chapter 1-26, but not exceeding three hundred fifty dollars;

(3) Possess a ~~master's or~~ doctorate degree in audiology from a regionally accredited educational institution;

~~(3)~~(4) Complete the supervised clinical practicum experience from a regionally accredited educational institution or its cooperating programs;

~~(4) Complete a period of supervised graduate professional experience in audiology as recognized by the American Speech Language Hearing Association or the American Academy of Audiology; and~~

(5) Pass a national standardized examination in audiology as recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology; and

(5) Have not committed an act for which disciplinary action may be justified.

An applicant for an audiology license who completed training prior to August 30, 2007, and who possesses a master's degree in audiology, is exempt from the requirements of subdivisions (3) and (4) upon proof of completion of a period of supervised graduate professional experience in audiology recognized by the American Speech-Language-Hearing Association or the American Academy of Audiology.

Section 14. That § 36-24-20 be AMENDED:

36-24-20. ~~Any applicant who otherwise qualifies for a license to practice hearing aid dispensing is entitled to be examined.~~ The practicum examination ~~shall~~ required by subdivision 36-24-17.2(6) must include ~~the following~~:

(1) Tests of knowledge in the following areas as they pertain to the fitting and dispensing of hearing aids:

(a) Basic physics of sound;

(b) The human hearing mechanism, including the science of hearing and the rehabilitation of abnormal hearing disorders; and

(c) Structure and function of hearing aids; and

(2) Tests of proficiency in the following techniques as they pertain to the fitting and dispensing of hearing aids:

(a) Pure tone audiometry, including air conduction and bone conduction testing;

(b) Live voice and recorded voice speech audiometry, including speech threshold testing and speech discrimination testing;

(c) Effective masking;

(d) Recording and evaluation of audiograms and speech audiometry tests to determine hearing aid candidacy;

(e) Selection and adaptation of hearing aids and testing of hearing aids;

(f) Taking earmold impressions~~,~~; and ~~proficiency in any~~

(g) Any other skills as they pertain to the fitting and dispensing of hearing aids.

~~No test under this section~~ The practicum examination may not include any questions requiring a medical or surgical education.

Section 15. That § 36-24-24.1 be AMENDED:

36-24-24.1. Nothing in this chapter may be construed as preventing or restricting:

(1) A person licensed ~~or~~, certified, registered, or otherwise credentialed by this state in another profession from practicing within the scope of the profession for which the person is licensed ~~or~~, certified, registered, or otherwise credentialed;

(2) A person credentialed by this state as a teacher of deaf or hard of hearing students ~~providing instruction to persons who are deaf or hard of hearing~~ from:

(a) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or

(b) Teaching students in institutions of higher education;

(3) A physician or surgeon licensed by this state from performing tasks directly related to a disorder being treated;

(4) Any person possessing a valid certificate as a certified industrial audiometric technician or occupational hearing conservationist recognized

by the board as meeting Council for Accreditation in Occupational Hearing Conservation ~~Standards~~ standards if ~~such~~ the service is performed in cooperation with either an audiologist licensed under this chapter or a licensed physician of this state;

(5) The activities and services of a person pursuing a course of study leading to a degree in speech-language pathology or audiology at a college or university if:

(a) The activities and services constitute a part of a planned course of study at that institution;

(b) The person is designated by the title of intern, trainee, student, volunteer, or other title clearly indicating the status appropriate to the person's level of education; and

(c) The person works under the supervision of an audiologist;

(6) The provision of over-the-counter hearing aids or devices available without the supervision, prescription, or other order, involvement, or intervention of a licensed person, to consumers through in-person transactions, by mail, or online; or

(7) Any commercial activity involving over-the-counter hearing aids or devices, including servicing, marketing, sale, dispensing, use, customer support, or distribution of over-the-counter hearing aids or devices through in-person transactions, by-mail, or online.

Section 16. That § 36-24-24.2 be AMENDED:

36-24-24.2. ~~The board shall issue a provisional hearing aid dispensing license, valid until the board receives the results from the next available administration of the examination following a submission of application of license, to an applicant to provide hearing aid services to a person who is waiting to take the hearing aid dispensing examination under this chapter.~~ The board may issue a provisional ~~hearing aid dispensing~~ license ~~valid until the board receives the results from the next available administration of the examination, not to exceed a one year period, to provide hearing aid services only~~ to a person who:

(1) Except for ~~taking and~~ passing an examination under this chapter, otherwise qualifies for a hearing aid dispensing license;

(2) Submits an application on the form prescribed by the board; and

(3) Pays the application fee set by the board, pursuant to rules promulgated pursuant to chapter 1-26, not to exceed one hundred fifty dollars.

~~If a person who holds a provisional hearing aid dispensing license issued under this section after the date of issue is unable to be present at the board specified examination, the~~ A provisional ~~hearing aid dispensing~~ license ~~may not be renewed~~ is valid until the board receives the results of the qualifying examination. The board may not renew a provisional license except for good cause shown to the satisfaction of the board.

~~While the provisional hearing aid dispensing license is in effect, the holder~~ A person who holds a provisional license pursuant to this section may provide hearing aid services only ~~while being trained~~ under the supervision of a licensed hearing aid dispenser or licensed audiologist.

Section 17. That § 36-24-25.1 be AMENDED:

36-24-25.1. ~~Pending board approval, the~~ The board may issue a hearing

aid dispensing license or audiology license to ~~an applicant holding~~ a person who holds a valid license from another state in the ~~applicant's~~ person's respective professional area who:

(1) Applies to the board on a form prescribed by the board;

(2) Pays ~~to the board~~ the application fee, not to exceed three hundred fifty dollars, set by the board by rule promulgated pursuant to chapter 1-26; and

(3) Shows proof of a current valid ~~professional licensure;~~

~~(4) Holds a license from a state with equivalent licensure standards; and~~

~~(5) Is practicing audiology or hearing aid dispensing in the state in which the license was issued~~ license from a state with equivalent licensure standards.

An applicant for a hearing aid dispensing license who holds a current license to practice hearing aid dispensing in another state is exempt from the requirement of subdivision 36-24-17.2(5) upon furnishing proof of a current, valid license and passage of a board-approved national examination.

Section 18. That § 36-24-25.2 be AMENDED:

36-24-25.2. The board shall waive the education, practicum, and professional experience requirements for ~~applicants~~ an applicant who received a professional education in another country if ~~the~~:

(1) The board is satisfied that equivalent education and practicum requirements have been met; and ~~the~~

(2) The applicant passes the national examination in audiology.

Section 19. That § 36-24-29.1 be AMENDED:

36-24-29.1. ~~A licensee~~ The board may reinstate the license of a person who fails to renew the license by the end of the thirty-day grace period ~~may have the license reinstated~~ if:

(1) The person submits an application for reinstatement to the board within ~~three years~~ twenty-four months after the expiration date of the license;

(2) The person meets the requirements established by the board as conditions for license renewal; and

(3) The person pays to the board a reinstatement fee that equals the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee, not to exceed one hundred dollars, set by the board~~,~~ by rule promulgated pursuant to chapter 1-26.

~~Any~~ The board may not reinstate the license of a person who fails to renew ~~a~~ the license within ~~three years~~ twenty-four months from the expiration date ~~may not have the license reinstated~~. The person may apply for and obtain a new license ~~on conditions of~~ in accordance with the requirements of this chapter ~~and pay to the board the appropriate fees~~.

Section 20. That § 36-24-29.2 be AMENDED:

36-24-29.2. A suspended license is subject to expiration and may be renewed as provided in this chapter, but such renewal does not entitle the licensee, while the license remains suspended and until the license is reinstated, to engage

in the licensed activity or in any other conduct or activity in violation of the order of judgment by which the license was suspended.

~~A license revoked on~~ If, after disciplinary ~~grounds~~ action, a license is ~~subject to~~ reinstated after its expiration ~~as provided in this chapter, and the license may not be renewed. If such license is reinstated after its expiration~~, the licensee, as a condition of reinstatement, ~~shall~~ must pay a reinstatement fee equal to the renewal fee in effect on the last regular renewal date immediately preceding the date of reinstatement, plus any late fee set by the board by rule, promulgated pursuant to chapter 1-26, not to exceed one hundred dollars ~~set by the board, by rule promulgated pursuant to chapter 1-26~~. A licensee who seeks to reinstate a license after disciplinary action must apply to the board.

If a licensee is placed on probation, the board may require the license holder to:

(1) Report regularly to the board on matters that are the basis of the probation;

(2) Limit practice to areas prescribed by the board; or

(3) Order or review continuing education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Section 21. That § 36-24-31 be AMENDED:

36-24-31. ~~Any person who holds a hearing aid dispensing license or an audiology license shall notify the board in writing of the town and street address of the place where the licensee engages or intends to engage in the practice of the dispensing of hearing aids or audiology. If the place of business is located in, or in connection with, a place of residence, the room to be used as an office shall be clearly designated and identified for the convenience of the public. The board shall keep an up-to-date record of these addresses~~Each licensee, upon changing a name, place of employment, or place of business, must, within ninety days thereafter, provide the board with updated information. A post office box number may not be the address of the place of business.

The board may provide any notice required to be given by the board to a licensee by mailing the notice to the licensee's place of business on file with the board.

Section 22. That § 36-24-33 be AMENDED:

36-24-33. ~~Any person who practices the dispensing of hearing aids in the State of South Dakota shall deliver~~ A licensee must provide, to each person sold a hearing aid, a receipt ~~which~~ that contains the ~~seller's~~:

(1) Seller's signature~~, the business~~;

(2) Business address of the seller~~, specification~~;

(3) Specifications of the hearing aid furnished, including whether it is new, used, or rebuilt~~, serial~~;

(4) Serial number of the aid~~, date~~;

(5) Date of sale~~, and the total~~;

(6) Total purchase price charged for the aid, less any allowance for a trade-in~~, if any,~~; and ~~the net~~

(7) Net amount paid by the purchaser.

A copy of the original sales order constitutes a valid receipt and a legal bill of sale, and the purchaser's signature constitutes full acknowledgment of the terms of the sale. Any purchaser of a hearing aid is entitled to a refund of the full purchase price advanced by the purchaser for the hearing aid, less a maximum of ten percent, upon the return of the hearing aid by the purchaser to the licensee within thirty days from the date of delivery unless set by contract for more than thirty days. Any refund ~~shall~~ must be paid within thirty days of the return date. A violation of this section is a Class 2 misdemeanor.

Section 23. That § 36-24-39.1 be AMENDED:

36-24-39.1. ~~Conduct which endangers or is likely to endanger the health, welfare, or safety of the public is grounds for~~ The board may take disciplinary action ~~and includes~~ for the following conduct:

(1) ~~Aiding or abetting unlicensed practice;~~

~~(2) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or any other representation;~~

~~(3) Falsely representing the use or availability or services or advice of a physician;~~

~~(4) Misrepresenting the applicant, licensee, or holder by using the word, doctor, or any similar word, abbreviation, or symbol if the use is not accurate or if the degree was not obtained from a regionally accredited institution;~~

~~(5) Committing any act of dishonorable or unprofessional conduct while engaging in the practice of audiology or hearing aid dispensing;~~

~~(6) Engaging in illegal, incompetent, or habitually negligent practice;~~

~~(7) Providing professional services while mentally incompetent, under the influence of alcohol, using any narcotic or controlled dangerous substance or other drug that is in excess of therapeutic amounts or without valid medical indication or having a serious infectious or contagious disease;~~

~~(8) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from such services, devices, appliances, or products;~~

~~(9) Violating any provision of this chapter, any order given by the board, or rule adopted by the board;~~

~~(10) Being convicted of or pleading guilty or nolo contendere to a felony, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;~~

~~(11) Being disciplined by a licensing or disciplinary authority of any other state or country or convicted or disciplined by a court of any state or country for an act that would be grounds for disciplinary action under this section;~~

~~(12) Obtaining any fee or making any sale by fraud or misrepresentation;~~

~~(13) Advertising a particular model, type, or kind of hearing aid for sale when purchasers or prospective purchasers responding to the advertisement cannot purchase or are dissuaded from purchasing the advertised model, type, or kind if it is established that the purpose of the advertisement is to obtain prospects for the sale of a different model, type, or kind than that advertised;~~

~~(14) Permitting another person to use the hearing aid dispensing license or audiology license;~~

~~(15) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations, or falsely disparaging the products of competitors in any respect, or their business methods, selling prices, values, credit terms, policies, or services;~~

~~(16) Displaying competitive products in a show window, shop, or advertisement in such manner as to falsely disparage them;~~

~~(17) Quoting prices of competitive hearing aids or devices without disclosing that they are not the present current prices, or to show, demonstrate, or represent competitive models as being current models when such is not the fact;~~

~~(18) Imitating or simulating the trademarks, trade names, brands, or labels of competitors, with the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers;~~

~~(19) Using any trade name, corporate name, trademark, or other designation, which has the capacity and tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the name, nature, or origin of any~~

~~product of the industry, or of any material used in the product, or which is false, deceptive, or misleading in any other material effect;~~

~~(20) Obtaining information concerning the business of a competitor by bribery of an employee or agent of a competitor, by false or misleading statements or representations, impersonation of one in authority, or by any other unfair means;~~

~~(21) Giving, or offering to give money or anything of value to any person who advises another in a professional capacity as an inducement to influence them or have them influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or audiologist, or to influence persons to refrain from dealing in the products of competitors;~~

~~(22) Use of a false name or alias in the practice of the business~~

Fraudulently or deceptively obtaining or attempting to obtain a license or provisional license;

(2) Fraudulently or deceptively using a license or provisional license;

(3) Altering a license or provisional license;

(4) Aiding or abetting unlicensed practice;

(5) Selling, bartering, or offering to sell or barter a license or provisional license;

(6) Committing fraud or deceit in the practice of audiology or licensed hearing aid dispensing, including:

(a) Willfully making or filing a false report or record in the practice of audiology or licensed hearing aid dispensing;

(b) Submitting a false statement to collect a fee; or

(c) Obtaining a fee through fraud or misrepresentation;

(7) Using or promoting or causing the use of any misleading, deceiving, improbable, or untruthful advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand insignia, or any other representation;

(8) Falsely representing the use or availability of services or advice of a physician;

(9) Misrepresenting the applicant or licensee by use of the term, doctor, or any similar word, abbreviation, or symbol, if the use is not accurate or if the degree was not obtained from a regionally accredited institution;

(10) Committing any act of dishonesty or unprofessional conduct while engaging in the practice of audiology or licensed hearing aid dispensing;

(11) Engaging in illegal, incompetent, or negligent practice;

(12) Providing services or promoting the sale of devices, appliances, or products to a person who cannot reasonably be expected to benefit from the services, devices, appliances, or products as supported by relevant published literature;

(13) Violating any provision of this chapter, or any lawful order given, or rule adopted, by the board;

(14) Being convicted or pleading guilty or nolo contendere to a felony or to a crime involving moral turpitude, as defined by subdivision 22-1-2(25), whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;

(15) Being disciplined or convicted by a disciplinary authority or court of any state or country, or nationally recognized professional organization, for an act that would be grounds for disciplinary action under this section;

(16) Failing to report any conviction or discipline referenced in subdivision (15);

(17) Failing to report suspected cases of child abuse or vulnerable adult abuse; or

(18) Violating federal, state, or local laws relating to the licensee's profession.

Section 24. That § 36-24-39.2 be AMENDED:

36-24-39.2. Any person licensed under this chapter is subject to the disciplinary actions of this section. Disciplinary actions are subject to contested case procedure in chapter 1-26. The board may impose, separately or in combination, any of the following disciplinary actions ~~if an applicant for a license or a licensee is found guilty of conduct which endangered or is likely to endanger the health, welfare, or safety of the public~~:

(1) Refuse to issue or renew a license;

(2) Issue a letter of reprimand or concern;

(3) Require ~~restitution of fees~~ the licensee to reimburse the board for the costs of an investigation and proceedings;

(4) Impose probationary conditions;

(5) Suspend or revoke a license;

(6) Impose practice or supervision requirements, or both; or

(7) Require the licensee to attend continuing education programs specified by the board.

Section 25. That § 36-24-41 be AMENDED:

36-24-41. ~~No hearing aid dispensing license or audiology~~ The board may suspend, revoke, deny, or deny the renewal of a license issued pursuant to this chapter ~~may be suspended, revoked, or denied, and no renewal may be denied, except~~ in compliance with chapter 1-26 and chapter 36-1C.

Any decision of the board to discipline a licensee, or to suspend, revoke, or reinstate a license requires a majority vote of the board membership.

Any party aggrieved by the acts, rulings, or decision of the board relating to refusal to grant, renew, or reinstate a license, or to revoke or suspend a license, has the right to appeal the same under the provisions of chapter 1-26.

Section 26. That § 36-24-42 be AMENDED:

36-24-42. ~~The board may enforce any provision of this chapter by injunction or by any other appropriate proceeding~~Any person violating the provisions of this chapter may be enjoined from further violation upon application by the board for an injunction in any court of competent jurisdiction to restrain the person from continuing to practice. No proceeding may be barred by any proceeding ~~which~~ that occurred or is pending pursuant to § 36-24-39.2. However, an action for injunction is ~~alternate~~ an alternative to criminal proceedings, and the commencement of one proceeding by the board constitutes an election.

Section 27. That a NEW SECTION be added to chapter 36-24:

The board shall promulgate rules, pursuant to chapter 1-26, to:

(1) Delineate qualifications for licensure;

(2) Specify requirements for the renewal of licensure;

(3) Establish standards of professional conduct;

(4) Establish a schedule of disciplinary actions for violations of professional conduct;

(5) Establishment requirements for inactive licenses;

(6) Establish procedures for the collection and management of fees and payments; and

(7) Establish requirements for license application and renewal.

Section 28. That chapter 36-24 be amended with a NEW SECTION:

A licensed hearing aid dispenser or audiologist may provide services via telehealth pursuant to chapter 34-52. Any service delivered via telehealth must be equivalent to the quality of services delivered face-to-face.

Section 29. That § 36-24-1.1 be REPEALED:

~~For the purposes of this chapter, a hearing aid is any wearable instrument or device offered for the purpose of aiding or compensating for impaired human hearing and any parts, attachments, or accessories to the instrument or device, including ear molds, but excluding batteries and cords. The term, hearing aid, does not include cochlear implant or cochlear prosthesis.~~

Section 30. That § 36-24-1.2 be REPEALED:

~~For the purposes of this chapter, an audiologist is any person who engages in the practice of audiology and who meets the qualifications set forth in this~~

~~chapter. A person represents oneself to be an audiologist if that person holds out to the public by any means, or by any service or function performed, directly or indirectly, or by using the terms audiology, audiologist, audiometrist, audiological, hearing therapy, hearing therapist, hearing clinic, hearing clinician, hearing aid audiologist, or any variation that expresses these terms.~~

Section 31. That § 36-24-1.3 be REPEALED:

~~For the purposes of this chapter, a hearing aid dispenser is any person, other than an audiologist, engaged in the evaluation or measurement of the powers or range of human hearing by means of an audiometer, or by any other means devised, and the consequent selection or adaptation or sale of a hearing aid intended to compensate for hearing loss, including the making of an ear impression.~~

Section 32. That § 36-24-1.4 be REPEALED:

~~For the purposes of this chapter, instruction is either of the following:~~

~~(1) Providing audiology services or teaching in an infant or toddler program, a preschool, an elementary school, a secondary school, or a developmental disability program; or~~

~~(2) Teaching students in institutions of higher education.~~

Section 33. That § 36-24-1.5 be REPEALED:

~~For the purposes of this chapter, research is the systematic investigation designed to develop or contribute to generalizable knowledge about human communication, human communication disorders, and evaluation or treatment strategies. Activities which meet this definition constitute research. However, research does not include activities that take place under the auspices of a recognized institutional review board which reviews, approves, and monitors proposals and activities involving human subjects to ensure that the rights and welfare of such subjects are protected.~~

Section 34. That § 36-24-3 be REPEALED:

~~The board shall consist of five members who have been residents of this state for at least one year prior to their appointment. Two members of the board shall be audiologists who are currently practicing audiology or who have two years of experience practicing audiology and who hold active licensure for the practice of audiology in this state. The first audiologist appointed to the board shall meet the eligibility requirements for licensure as specified in this chapter. Two members of the board shall be persons with at least two years of experience in the practice of fitting and dispensing hearing aids and who hold an active hearing aid dispensing license. One member of the board shall be a representative of the public who is not associated with or financially interested in the practice or business of hearing aid dispensing or audiology or who is not a member of a related profession or occupation.~~

Section 35. That § 36-24-4 be REPEALED:

~~The members of the board enumerated in § 36-24-3 shall be appointed by the Governor. No member of the board may concurrently serve in an elected, appointed, or employed position in any state professional association or governmental regulatory agency which presents a conflict of interest.~~

Section 36. That § 36-24-4.1 be REPEALED:

~~The membership of the board shall include one lay member who shall be appointed by the Governor and shall have the same term of office as other members of the board. The lay member of the board shall be a member of the general public who:~~

~~(1) Is not and has never been an audiologist or hearing aid dispenser;~~

~~(2) Has no household member who is an audiologist or hearing aid dispenser;~~

~~(3) Is not and has never been a participant in a commercial or professional field related to audiology or the provisions of hearing aid services;~~

~~(4) Has no household member who participates in a commercial or professional field related to audiology or the provisions of hearing aid services; and~~

~~(5) Has not had, within two years before appointment, a financial interest in a person regulated by the board.~~

Section 37. That § 36-24-6 be REPEALED:

~~No member of the board may serve more than three consecutive full terms or be reappointed to the board until at least one year after the expiration of the member's third term of office. The appointment to an unexpired term is not considered a full term. The Governor may remove a member of the board for dishonorable conduct, incompetence, or neglect of duty.~~

Section 38. That § 36-24-7 be REPEALED:

~~In the event of a vacancy on the board caused by the death of a member, resignation, removal from the state, or for any other reason, the Governor shall appoint a new member to serve out the unexpired term.~~

Section 39. That § 36-24-13.4 be REPEALED:

~~Nothing in this chapter may be construed as preventing or restricting the activities and services of persons pursuing a course of study leading to a degree in speech language pathology or audiology at a college or university if these activities and services constitute a part of a planned course of study at that institution and these persons are designated by a title such as intern, trainee, student, volunteer, occupational hearing conservationist, industrial audiometric technician, or by other such title clearly indicating the status appropriate to their level of education and these persons work under the supervision of a person licensed by the state to practice audiology.~~

Section 40. That § 36-24-14 be REPEALED:

~~This chapter shall not apply to a physician licensed by the State Board of Medical and Osteopathic Examiners.~~

Section 41. That § 36-24-17.1 be REPEALED:

~~Any applicant pursuant to this chapter shall apply on a form prescribed by the board and pay any applicable fees. The applicant shall also meet all other qualifications specified within this chapter for each respective profession for which the person seeks licensure.~~

Section 42. That § 36-24-17.4 be REPEALED:

~~An applicant who does not meet the provisions of subdivision 36-24-17.3(4) or (5) may be issued a license to practice as an audiologist pending board approval if the applicant demonstrates the following:~~

~~(1) Has formally and consistently represented oneself to the public as an audiologist;~~

~~(2) Has a master's or doctorate degree in audiology from a regionally accredited educational institution;~~

~~(3) Has spent the majority of working hours in the practice of audiology;~~

~~(4) Passed any board designated written or oral exam for applicants who have not met subdivision 36-24-17.3(5);~~

~~(5) Submits an application on a form prescribed by the board by January 1, 1998; and~~

~~(6) Pays the application fee set by the board not to exceed three hundred fifty dollars.~~

Section 43. That § 36-24-18 be REPEALED:

~~An applicant for a hearing aid dispensing license having been notified by the board that the applicant has fulfilled the requirements of §§ 36-24-17.1 and 36-24-17.2 shall appear at a time, place, and before such persons as the board may designate, to be examined by written and oral tests to determine that the applicant is qualified to practice the fitting and dispensing of hearing aids.~~

Section 44. That § 36-24-19 be REPEALED:

~~As the volume of applications may make appropriate, the board shall administer the qualifying examinations throughout the year as the board may designate.~~

Section 45. That § 36-24-21.1 be REPEALED:

~~The board shall issue a license to any applicant who meets the requirements of this section and pays the application fee set by the board, by rule promulgated pursuant to chapter 1-26, not to exceed three hundred fifty dollars.~~

Section 46. That § 36-24-24.3 be REPEALED:

~~The board shall issue a provisional audiology license to any applicant who:~~

~~(1) Except for the postgraduate professional experience, meets the academic, practicum, and examination requirements of this chapter;~~

~~(2) Applies to the board on a form prescribed by the board, with a plan for the content of the postgraduate professional experience; and~~

~~(3) Pays to the board the application fee for a provisional license not to exceed one hundred fifty dollars set by the board by rule promulgated pursuant to chapter 1-26.~~

~~A person holding a provisional audiology license is authorized to practice audiology only while working under the supervision of a licensed audiologist under the provisions of this chapter. The term for provisional audiology licenses and the conditions for renewal shall be determined by the board by rules promulgated pursuant to chapter 1-26.~~

Section 47. That § 36-24-34 be REPEALED:

~~No person may sell, barter, or offer to sell or barter any hearing aid dispensing license or audiology license. A violation of this section is a Class 2 misdemeanor.~~

Section 48. That § 36-24-35 be REPEALED:

~~No person may purchase a hearing aid dispensing license or an audiology license or procure either license by barter with the intent to use it as evidence of the holder's qualifications to practice the dispensing of hearing aids or to practice audiology. A violation of this section is a Class 2 misdemeanor.~~

Section 49. That § 36-24-36 be REPEALED:

~~No person may alter a hearing aid dispensing license or an audiology license with fraudulent intent. A violation of this section is a Class 2 misdemeanor.~~

Section 50. That § 36-24-37 be REPEALED:

~~No person may use or attempt to use a valid hearing aid dispensing license or audiology license which has been purchased, fraudulently obtained, counterfeited, or altered. A violation of this section is a Class 2 misdemeanor.~~

Section 51. That § 36-24-38 be REPEALED:

~~No person may intentionally make a false statement in an application for a hearing aid dispensing license or an audiology license or for a renewal of either license. A violation of this section is a Class 2 misdemeanor.~~

Section 52. That § 36-24-45 be REPEALED:

~~An applicant shall be issued a South Dakota hearing aid dispensing license if the applicant holds a current and valid South Dakota hearing aid dispenser's license and is not eligible for a South Dakota audiology license prior to July 1, 1997.~~

Section 53. That § 36-24-46 be REPEALED:

~~The board may promulgate rules pursuant to chapter 1-26 to establish application fees, license fees, provisional license fees, renewal fees, penalty fees, reciprocity fees, and late fees. All fees provided under this chapter are nonrefundable. No fee may exceed three hundred fifty dollars.~~

~~The board may also promulgate rules pursuant to chapter 1-26 for the qualification of applicants, issuance and renewal of licenses, and requirements for continuing education.~~

Signed February 21, 2024

Chapter 160

(House Bill 1015)

An Act to adopt the social work licensure compact.

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

Section 1. That a NEW SECTION be added to title 36:

SOCIAL WORK LICENSURE COMPACT

SECTION 1: PURPOSE

The purpose of this Compact is to facilitate interstate practice of Regulated Social Workers by improving public access to competent Social Work Services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Social Work Services;

B. Reduce overly burdensome and duplicative requirements associated with holding multiple licenses;

C. Enhance the Member States' ability to protect the public's health and safety;

D. Encourage the cooperation of Member States in regulating multistate practice;

E. Promote mobility and address workforce shortages by eliminating the necessity for licenses in multiple states by providing for the mutual recognition of other Member State licenses;

F. Support military families;

G. Facilitate the exchange of licensure and disciplinary information among Member States;

H. Authorize all Member States to hold a Regulated Social Worker accountable for abiding by a Member State's laws, regulations, and applicable professional standards in the Member State in which the client is located at the time care is rendered; and

I. Allow for the use of telehealth to facilitate increased access to Regulated Social Work Services.

SECTION 2. DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. "Active Military Member" means any individual with full-time duty status in the active armed forces of the United States including members of the National Guard and Reserve;

B. "Adverse Action" means any administrative, civil, equitable or criminal action permitted by a state's laws which is imposed by a Licensing Authority or other authority against a Regulated Social Worker, including actions against an individual's license or Multistate Authorization to Practice such as revocation, suspension, probation, monitoring of the Licensee, limitation on the Licensee's practice, or any other Encumbrance on licensure affecting a Regulated Social Worker's authorization to practice, including issuance of a cease and desist action;

C. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a Licensing Authority to address practitioners with an Impairment;

D. "Charter Member States" means Member States who have enacted legislation to adopt this Compact where such legislation predates the

effective date of this Compact as described in Section 14;

E. "Compact Commission" or "Commission" means the government agency whose membership consists of all States that have enacted this Compact, which is known as the Social Work Licensure Compact Commission, as described in Section 10, and which shall operate as an instrumentality of the Member States;

F. "Current significant investigative information" means:

1. Investigative information that a Licensing Authority, after a preliminary inquiry that includes notification and an opportunity for the Regulated Social Worker to respond has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction as may be defined by the Commission; or

2. Investigative information that indicates that the Regulated Social Worker represents an immediate threat to public health and safety, as may be defined by the Commission, regardless of whether the Regulated Social Worker has been notified and has had an opportunity to respond;

G. "Data system" means a repository of information about Licensees, including, continuing education, examination, licensure, Current Significant Investigative Information, Disqualifying Event, Multistate License(s) and Adverse Action information or other information as required by the Commission;

H. "Domicile" means the jurisdiction in which the Licensee resides and intends to remain indefinitely;

I. "Disqualifying Event" means any Adverse Action or incident which results in an Encumbrance that disqualifies or makes the Licensee ineligible to either obtain, retain or renew a Multistate License;

J. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Social Work licensed and regulated by a Licensing Authority;

K. "Executive Committee" means a group of delegates elected or appointed to act on behalf of, and within the powers granted to them by, the compact and Commission;

L. "Home State" means the Member State that is the Licensee's primary Domicile;

M. "Impairment" means a condition(s) that may impair a practitioner's ability to engage in full and unrestricted practice as a Regulated Social Worker without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments;

N. "Licensee(s)" means an individual who currently holds a license from a State to practice as a Regulated Social Worker;

O. "Licensing authority" means the board or agency of a Member State, or equivalent, that is responsible for the licensing and regulation of Regulated Social Workers;

P. "Member State" means a state, commonwealth, district, or territory of the United States of America that has enacted this Compact;

Q. "Multistate Authorization to Practice" means a legally authorized privilege

to practice, which is equivalent to a license, associated with a Multistate License permitting the practice of Social Work in a Remote State;

R. "Multistate License" means a license to practice as a Regulated Social Worker issued by a Home State Licensing Authority that authorizes the Regulated Social Worker to practice in all Member States under Multistate Authorization to Practice;

S. "Qualifying National Exam" means a national licensing examination approved by the Commission;

T. "Regulated Social Worker" means any clinical, master's or bachelor's Social Worker licensed by a Member State regardless of the title used by that Member State;

U. "Remote State" means a Member State other than the Licensee's Home State;

V. "Rule(s)" or "Rule(s) of the Commission" means a regulation or regulations duly promulgated by the Commission, as authorized by the Compact, that has the force of law;

W. "Single State License" means a Social Work license issued by any State that authorizes practice only within the issuing State and does not include Multistate Authorization to Practice in any Member State;

X. "Social Work" or "Social Work Services" means the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities through the care and services provided by a Regulated Social Worker as set forth in the Member State's statutes and regulations in the State where the services are being provided;

Y. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Social Work; and

Z. "Unencumbered License" means a license that authorizes a Regulated Social Worker to engage in the full and unrestricted practice of Social Work.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To be eligible to participate in the compact, a potential Member State must currently meet all of the following criteria:

1. License and regulate the practice of Social Work at either the clinical, master's, or bachelor's category;

2. Require applicants for licensure to graduate from a program that is:

a. Operated by a college or university recognized by the Licensing Authority;

b. Accredited, or in candidacy by an institution that subsequently becomes accredited, by an accrediting agency recognized by either:

i. the Council for Higher Education Accreditation, or its successor; or

ii. the United States Department of Education; and

c. Corresponds to the licensure sought as outlined in Section 4;

3. Require applicants for clinical licensure to complete a period of supervised practice;

4. Have a mechanism in place for receiving, investigating, and adjudicating complaints about Licensees.

B. To maintain membership in the Compact a Member State shall:

1. Require that applicants for a Multistate License pass a Qualifying National Exam for the corresponding category of Multistate License sought as outlined in Section 4;

2. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

3. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Current Significant Investigative Information regarding a Licensee;

4. Implement procedures for considering the criminal history records of applicants for a Multistate License. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

5. Comply with the Rules of the Commission;

6. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable Home State laws;

7. Authorize a Licensee holding a Multistate License in any Member State to practice in accordance with the terms of the Compact and Rules of the Commission; and

8. Designate a delegate to participate in the Commission meetings.

C. A Member State meeting the requirements of Section 3.A. and 3.B of this Compact shall designate the categories of Social Work licensure that are eligible for issuance of a Multistate License for applicants in such Member State. To the extent that any Member State does not meet the requirements for participation in the Compact at any particular category of Social Work licensure, such Member State may choose, but is not obligated to, issue a Multistate License to applicants that otherwise meet the requirements of Section 4 for issuance of a Multistate License in such category or categories of licensure.

D. The Home State may charge a fee for granting the Multistate License.

SECTION 4. SOCIAL WORKER PARTICIPATION IN THE COMPACT

A. To be eligible for a Multistate License under the terms and provisions of the Compact, an applicant, regardless of category must:

1. Hold or be eligible for an active, Unencumbered License in the Home State;

2. Pay any applicable fees, including any State fee, for the Multistate License;

3. Submit, in connection with an application for a Multistate License, fingerprints or other biometric data for the purpose of obtaining criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

4. Notify the Home State of any Adverse Action, Encumbrance, or restriction on any professional license taken by any Member State or non-Member State within 30 days from the date the action is taken;

5. Meet any continuing competence requirements established by the Home State;

6. Abide by the laws, regulations, and applicable standards in the Member State where the client is located at the time care is rendered.

B. An applicant for a clinical-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a clinical-category Qualifying National Exam; or

b. Licensure of the applicant in their Home State at the clinical category, beginning prior to such time as a Qualifying National Exam was required by the Home State and accompanied by a period of continuous Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a master's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. The Council for Higher Education Accreditation or its successor; or

ii. The United States Department of Education.

3. Fulfill a practice requirement, which shall be satisfied by demonstrating completion of either:

a. A period of postgraduate supervised clinical practice equal to a minimum of three thousand hours; or

b. A minimum of two years of full-time postgraduate supervised clinical practice; or

c. The substantial equivalency of the foregoing practice requirements which the Commission may determine by Rule.

C. An applicant for a master's-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a masters-category Qualifying National Exam;

b. Licensure of the applicant in their Home State at the master's category, beginning prior to such time as a Qualifying National Exam was required by the Home State at the master's category and accompanied by a continuous period of Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a master's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. The Council for Higher Education Accreditation or its successor; or

ii. The United States Department of Education.

D. An applicant for a bachelor's-category Multistate License must meet all of the following requirements:

1. Fulfill a competency requirement, which shall be satisfied by either:

a. Passage of a bachelor's-category Qualifying National Exam;

b. Licensure of the applicant in their Home State at the bachelor'scategory, beginning prior to such time as a Qualifying National Exam was required by the Home State and accompanied by a period of continuous Social Work licensure thereafter, all of which may be further governed by the Rules of the Commission; or

c. The substantial equivalency of the foregoing competency requirements which the Commission may determine by Rule.

2. Attain at least a bachelor's degree in Social Work from a program that is:

a. Operated by a college or university recognized by the Licensing Authority; and

b. Accredited, or in candidacy that subsequently becomes accredited, by an accrediting agency recognized by either:

i. The Council for Higher Education Accreditation or its successor; or

ii. The United States Department of Education.

E. The Multistate License for a Regulated Social Worker is subject to the renewal requirements of the Home State. The Regulated Social Worker must maintain compliance with the requirements of Section 4(A) to be eligible to renew a Multistate License.

F. The Regulated Social Worker's services in a Remote State are subject to that Member State's regulatory authority. A Remote State may, in accordance with due process and that Member State's laws, remove a Regulated Social Worker's Multistate Authorization to Practice in the Remote State for a specific period of time, impose fines, and take any other necessary actions to protect the health and safety of its citizens.

G. If a Multistate License is encumbered, the Regulated Social Worker's Multistate Authorization to Practice shall be deactivated in all Remote States until the Multistate License is no longer encumbered.

H. If a Multistate Authorization to Practice is encumbered in a Remote State, the regulated Social Worker's Multistate Authorization to Practice may be deactivated in that State until the Multistate Authorization to Practice is no longer encumbered.

SECTION 5: ISSUANCE OF A MULTISTATE LICENSE

A. Upon receipt of an application for Multistate License, the Home State Licensing Authority shall determine the applicant's eligibility for a Multistate License in accordance with Section 4 of this Compact.

B. If such applicant is eligible pursuant to Section 4 of this Compact, the Home State Licensing Authority shall issue a Multistate License that authorizes the applicant or Regulated Social Worker to practice in all Member States under a Multistate Authorization to Practice.

C. Upon issuance of a Multistate License, the Home State Licensing Authority shall designate whether the Regulated Social Worker holds a Multistate License in the Bachelors, Masters, or Clinical category of Social Work.

D. A Multistate License issued by a Home State to a resident in that State shall be recognized by all Compact Member States as authorizing Social Work Practice under a Multistate Authorization to Practice corresponding to each category of licensure regulated in each Member State.

SECTION 6: AUTHORITY OF INTERSTATE COMPACT COMMISSION AND MEMBER STATE LICENSING AUTHORITIES

A. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Member State to enact and enforce laws, regulations, or other rules related to the practice of Social Work in that State, where those laws, regulations, or other rules are not inconsistent with the provisions of this Compact.

B. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

C. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Member

State to take Adverse Action against a Licensee's Single State License to practice Social Work in that State.

D. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Remote State to take Adverse Action against a Licensee's Multistate Authorization to Practice in that State.

E. Nothing in this Compact, nor any Rule of the Commission, shall be construed to limit, restrict, or in any way reduce the ability of a Licensee's Home State to take Adverse Action against a Licensee's Multistate License based upon information provided by a Remote State.

SECTION 7: REISSUANCE OF A MULTISTATE LICENSE BY A NEW HOME STATE

A. A Licensee can hold a Multistate License, issued by their Home State, in only one Member State at any given time.

B. If a Licensee changes their Home State by moving between two Member States:

1. The Licensee shall immediately apply for the reissuance of their Multistate License in their new Home State. The Licensee shall pay all applicable fees and notify the prior Home State in accordance with the Rules of the Commission.

2. Upon receipt of an application to reissue a Multistate License, the new Home State shall verify that the Multistate License is active, unencumbered and eligible for reissuance under the terms of the Compact and the Rules of the Commission. The Multistate License issued by the prior Home State will be deactivated and all Member States notified in accordance with the applicable Rules adopted by the Commission.

3. Prior to the reissuance of the Multistate License, the new Home State shall conduct procedures for considering the criminal history records of the Licensee. Such procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records.

4. If required for initial licensure, the new Home State may require completion of jurisprudence requirements in the new Home State.

5. Notwithstanding any other provision of this Compact, if a Licensee does not meet the requirements set forth in this Compact for the reissuance of a Multistate License by the new Home State, then the Licensee shall be subject to the new Home State requirements for the issuance of a Single State License in that State.

C. If a Licensee changes their primary State of residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, then the Licensee shall be subject to the State requirements for the issuance of a Single State License in the new Home State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States; however, for the purposes of this Compact, a Licensee shall have only one Home State, and only one Multistate License.

E. Nothing in this Compact shall interfere with the requirements established by a Member State for the issuance of a Single State License.

SECTION 8. MILITARY FAMILIES

An Active Military Member or their spouse shall designate a Home State where the individual has a Multistate License. The individual may retain their Home State designation during the period the service member is on active duty.

SECTION 9. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Regulated Social Worker's Multistate Authorization to Practice only within that Member State, and issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Authority in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing Licensing Authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

2. Only the Home State shall have the power to take Adverse Action against a Regulated Social Worker's Multistate License.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Regulated Social Worker who changes their Home State during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the Data System shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Regulated Social Worker the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Regulated Social Worker.

E. A Member State may take Adverse Action based on the factual findings of another Member State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Social Work practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the Multistate License of a Regulated Social Worker, the Regulated Social Worker's Multistate Authorization to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the Multistate License. All Home State disciplinary orders that impose Adverse Action against the license of a Regulated Social Worker shall include a statement that the Regulated Social Worker's Multistate Authorization to Practice is deactivated in all Member States until all conditions of the decision, order or agreement are satisfied.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State and all other Member States of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

J. Nothing in this Compact shall authorize a Member State to demand the issuance of subpoenas for attendance and testimony of witnesses or the production of evidence from another Member State for lawful actions within that Member State.

K. Nothing in this Compact shall authorize a Member State to impose discipline against a Regulated Social Worker who holds a Multistate Authorization to Practice for lawful actions within another Member State.

SECTION 10. ESTABLISHMENT OF SOCIAL WORK LICENSURE COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint government agency whose membership consists of all Member States that have enacted the compact known as the Social Work Licensure Compact Commission. The Commission is an instrumentality of the Compact States acting jointly and not an instrumentality of any one State. The Commission shall come into existence on or after the effective date of the Compact as set forth in Section 14.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one (1) delegate selected by that Member State's Licensing Authority.

2. The delegate shall be either:

a. A current member of the Licensing Authority at the time of appointment, who is a Regulated Social Worker or public member of the State Licensing Authority; or

b. An administrator of the Licensing Authority or their designee.

3. The Commission shall by Rule or bylaw establish a term of office for delegates and may by Rule or bylaw establish term limits.

4. The Commission may recommend removal or suspension of any delegate from office.

5. A Member State's Licensing Authority shall fill any vacancy of its delegate occurring on the Commission within 60 days of the vacancy.

6. Each delegate shall be entitled to one vote on all matters before the Commission requiring a vote by Commission delegates.

7. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates to meet by telecommunication, videoconference, or other means of communication.

8. The Commission shall meet at least once during each calendar year. Additional meetings may be held as set forth in the bylaws. The Commission may meet by telecommunication, video conference, or other similar electronic means.

C. The Commission shall have the following powers:

1. Establish the fiscal year of the Commission;

2. Establish code of conduct and conflict of interest policies;

3. Establish and amend Rules and bylaws;

4. Maintain its financial records in accordance with the bylaws;

5. Meet and take such actions as are consistent with the provisions of this Compact, the Commission's Rules, and the bylaws;

6. Initiate and conclude legal proceedings or actions in the name of the Commission, provided that the standing of any Licensing Authority to sue or be sued under applicable law shall not be affected;

7. Maintain and certify records and information provided to a Member State as the authenticated business records of the Commission, and designate an agent to do so on the Commission's behalf;

8. Purchase and maintain insurance and bonds;

9. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

10. Conduct an annual financial review;

11. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

12. Assess and collect fees;

13. Accept any and all appropriate gifts, donations, grants of money, other sources of revenue, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety or conflict of interest;

14. Lease, purchase, retain, own, hold, improve, or use any property, real, personal, or mixed, or any undivided interest therein;

15. Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

16. Establish a budget and make expenditures;

17. Borrow money;

18. Appoint committees, including standing committees, composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

19. Provide and receive information from, and cooperate with, law enforcement agencies;

20. Establish and elect an Executive Committee, including a chair and a vice chair;

21. Determine whether a State's adopted language is materially different from the model compact language such that the State would not qualify for participation in the Compact; and

22. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact. The powers, duties, and responsibilities of the Executive Committee shall include:

a. Oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its Rules and bylaws, and other such duties as deemed necessary;

b. Recommend to the Commission changes to the Rules or bylaws, changes to this Compact legislation, fees charged to Compact Member States, fees charged to Licensees, and other fees;

c. Ensure Compact administration services are appropriately provided, including by contract;

d. Prepare and recommend the budget;

e. Maintain financial records on behalf of the Commission;

f. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

g. Establish additional committees as necessary;

h. Exercise the powers and duties of the Commission during the interim between Commission meetings, except for adopting or amending Rules, adopting or amending bylaws, and exercising any other powers and duties expressly reserved to the Commission by Rule or bylaw; and

i. Other duties as provided in the Rules or bylaws of the Commission.

2. The Executive Committee shall be composed of up to eleven (11) members:

a. The chair and vice chair of the Commission shall be voting members of the Executive Committee; and

b. The Commission shall elect five voting members from the current membership of the Commission.

c. Up to four (4) ex-officio, nonvoting members from four (4) recognized national Social Work organizations.

d. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in the Commission's bylaws.

4. The Executive Committee shall meet at least annually.

a. Executive Committee meetings shall be open to the public, except that the Executive Committee may meet in a closed, non-public meeting as provided in subsection F.2 below.

b. The Executive Committee shall give seven (7) days' notice of its meetings, posted on its website and as determined to provide notice to persons with an interest in the business of the Commission.

c. The Executive Committee may hold a special meeting in accordance with subsection F.1.b. below.

E. The Commission shall adopt and provide to the Member States an annual report.

F. Meetings of the Commission

1. All meetings shall be open to the public, except that the Commission may meet in a closed, non-public meeting as provided in subsection F.2 below.

a. Public notice for all meetings of the full Commission of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 12, except that the Commission may hold a special meeting as provided in subsection F.1.b below.

b. The Commission may hold a special meeting when it must meet to conduct emergency business by giving 48 hours' notice to all commissioners, on the Commission's website, and other means as provided in the Commission's Rules. The Commission's legal counsel shall certify that the Commission's need to meet qualifies as an emergency.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting for the Commission or Executive Committee or other committees of the Commission to receive legal advice or to discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other matters, practices or procedures related to specific employees;

c. Current or threatened discipline of a Licensee by the Commission or by a Member State's Licensing Authority;

d. Current, threatened, or reasonably anticipated litigation;

e. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

f. Accusing any person of a crime or formally censuring any person;

g. Trade secrets or commercial or financial information that is privileged or confidential;

h. Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

i. Investigative records compiled for law enforcement purposes;

j. Information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact;

k. Matters specifically exempted from disclosure by federal or Member State law; or

l. Other matters as promulgated by the Commission by Rule.

3. If a meeting, or portion of a meeting, is closed, the presiding officer shall state that the meeting will be closed and reference each relevant exempting provision, and such reference shall be recorded in the minutes.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

G. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources as provided in subsection C(13).

3. The Commission may levy on and collect an annual assessment from each Member State and impose fees on Licensees of Member States to whom it grants a Multistate License to cover the cost of the operations and activities of the Commission and its staff,

which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount for Member States shall be allocated based upon a formula that the Commission shall promulgate by Rule.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the financial review and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the Commission.

H. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the Commission shall not in any way compromise or limit the immunity granted hereunder.

2. The Commission shall defend any member, officer, executive director, employee, and representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or as determined by the Commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining their own counsel at their own expense; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, and representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities,

provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

4. Nothing herein shall be construed as a limitation on the liability of any Licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable State laws.

5. Nothing in this Compact shall be interpreted to waive or otherwise abrogate a Member State's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other State or federal antitrust or anticompetitive law or regulation.

6. Nothing in this Compact shall be construed to be a waiver of sovereign immunity by the Member States or by the Commission.

SECTION 11. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated Data System.

B. The Commission shall assign each applicant for a Multistate License a unique identifier, as determined by the Rules of the Commission.

C. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license and information related thereto;

4. Non-confidential information related to Alternative Program participation, the beginning and ending dates of such participation, and other information related to such participation not made confidential under Member State law;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. The presence of Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact or the protection of the public, as determined by the Rules of the Commission.

D. The records and information provided to a Member State pursuant to this Compact or through the Data System, when certified by the Commission or an agent thereof, shall constitute the authenticated business records of the Commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial or administrative proceedings in a Member State.

E. Current Significant Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

1. It is the responsibility of the Member States to report any Adverse Action against a Licensee and to monitor the database to determine whether Adverse Action has been taken against a

Licensee. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

F. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

G. Any information submitted to the Data System that is subsequently expunged pursuant to federal law or the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 12. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently implement and administer the purposes and provisions of the Compact. A Rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the Rule is invalid because the Commission exercised its rulemaking authority in a manner that is beyond the scope and purposes of the Compact, or the powers granted hereunder, or based upon another applicable standard of review.

B. The Rules of the Commission shall have the force of law in each Member State, provided however that where the Rules of the Commission conflict with the laws of the Member State that establish the Member State's laws, regulations, and applicable standards that govern the practice of Social Work as held by a court of competent jurisdiction, the Rules of the Commission shall be ineffective in that State to the extent of the conflict.

C. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules shall become binding on the day following adoption or the date specified in the rule or amendment, whichever is later.

D. If a majority of the legislatures of the Member States rejects a Rule or portion of a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

E. Rules shall be adopted at a regular or special meeting of the Commission.

F. Prior to adoption of a proposed Rule, the Commission shall hold a public hearing and allow persons to provide oral and written comments, data, facts, opinions, and arguments.

G. Prior to adoption of a proposed Rule by the Commission, and at least thirty (30) days in advance of the meeting at which the Commission will hold a public hearing on the proposed Rule, the Commission shall provide a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform;

2. To persons who have requested notice of the Commission's notices of proposed rulemaking, and

3. In such other way(s) as the Commission may by Rule specify.

H. The Notice of Proposed Rulemaking shall include:

1. The time, date, and location of the public hearing at which the Commission will hear public comments on the proposed Rule and, if different, the time, date, and location of the meeting where the Commission will consider and vote on the proposed Rule;

2. If the hearing is held via telecommunication, video conference, or other electronic means, the Commission shall include the mechanism for access to the hearing in the Notice of Proposed Rulemaking;

3. The text of the proposed Rule and the reason therefor;

4. A request for comments on the proposed Rule from any interested person; and

5. The manner in which interested persons may submit written comments.

I. All hearings will be recorded. A copy of the recording and all written comments and documents received by the Commission in response to the proposed Rule shall be available to the public.

J. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

K. The Commission shall, by majority vote of all members, take final action on the proposed Rule based on the Rulemaking record and the full text of the Rule.

1. The Commission may adopt changes to the proposed Rule provided the changes do not enlarge the original purpose of the proposed Rule.

2. The Commission shall provide an explanation of the reasons for substantive changes made to the proposed Rule as well as reasons for substantive changes not made that were recommended by commenters.

3. The Commission shall determine a reasonable effective date for the Rule. Except for an emergency as provided in Section 12.L, the effective date of the rule shall be no sooner than 30 days after issuing the notice that it adopted or amended the Rule.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule with 48 hours' notice, with opportunity to comment, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of a Rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may

be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

N. No Member State's rulemaking requirements shall apply under this compact.

SECTION 13. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to implement the Compact.

2. Except as otherwise provided in this Compact, venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a Licensee for professional malpractice, misconduct or any such similar matter.

3. The Commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the Compact and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the Commission service of process shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall provide written notice to the defaulting State. The notice of default shall describe the default, the proposed means of curing the default, and any other action that the Commission may take, and shall offer training and specific technical assistance regarding the default.

2. The Commission shall provide a copy of the notice of default to the other Member States.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the delegates of the Member States, and all rights, privileges and benefits conferred on that State by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, the

defaulting State's State Licensing Authority and each of the Member States' Licensing Authority.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. Upon the termination of a State's membership from this Compact, that State shall immediately provide notice to all Licensees within that State of such termination. The terminated State shall continue to recognize all licenses granted pursuant to this Compact for a minimum of six (6) months after the date of said notice of termination.

G. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

H. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

I. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between Member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

J. Enforcement

1. By majority vote as provided by Rule, the Commission may initiate legal action against a Member State in default in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or the defaulting Member State's law.

2. A Member State may initiate legal action against the Commission in the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices to enforce compliance with the provisions of the Compact and its promulgated Rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. No person other than a Member State shall enforce this compact against the Commission.

SECTION 14. EFFECTIVE DATE, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the seventh Member State.

1. On or after the effective date of the Compact, the Commission shall convene and review the enactment of each of the first seven Member States ("Charter Member States") to determine if the statute enacted by each such Charter Member State is materially different than the model Compact statute.

a. A Charter Member State whose enactment is found to be materially different from the model Compact statute shall be entitled to the default process set forth in Section 13.

b. If any Member State is later found to be in default, or is terminated or withdraws from the Compact, the Commission shall remain in existence and the Compact shall remain in effect even if the number of Member States should be less than seven.

2. Member States enacting the Compact subsequent to the seven initial Charter Member States shall be subject to the process set forth in Section 10(C)(21) to determine if their enactments are materially different from the model Compact statute and whether they qualify for participation in the Compact.

3. All actions taken for the benefit of the Commission or in furtherance of the purposes of the administration of the Compact prior to the effective date of the Compact or the Commission coming into existence shall be considered to be actions of the Commission unless specifically repudiated by the Commission.

4. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules and bylaws shall be subject to the Rules and bylaws as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

B. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until 180 days after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Licensing Authority to comply with the investigative and Adverse Action reporting requirements of this Compact prior to the effective date of withdrawal.

3. Upon the enactment of a statute withdrawing from this compact, a State shall immediately provide notice of such withdrawal to all Licensees within that State. Notwithstanding any subsequent statutory enactment to the contrary, such withdrawing State shall continue to recognize all licenses granted pursuant to this compact for a minimum of 180 days after the date of such notice of withdrawal.

C. Nothing contained in this Compact shall be construed to invalidate or prevent any licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict

with the provisions of this Compact.

D. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 15. CONSTRUCTION AND SEVERABILITY

A. This Compact and the Commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, and the implementation and administration of the Compact. Provisions of the Compact expressly authorizing or requiring the promulgation of Rules shall not be construed to limit the Commission's rulemaking authority solely for those purposes.

B. The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is held by a court of competent jurisdiction to be contrary to the constitution of any Member State, a State seeking participation in the Compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this Compact and the applicability thereof to any other government, agency, person or circumstance shall not be affected thereby.

C. Notwithstanding subsection B of this section, the Commission may deny a State's participation in the Compact or, in accordance with the requirements of Section 13.B, terminate a Member State's participation in the Compact, if it determines that a constitutional requirement of a Member State is a material departure from the Compact. Otherwise, if this Compact shall be held to be contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 16. CONSISTENT EFFECT AND CONFLICT WITH OTHER STATE LAWS

A. A Licensee providing services in a Remote State under a Multistate Authorization to Practice shall adhere to the laws and regulations, including laws, regulations, and applicable standards, of the Remote State where the client is located at the time care is rendered.

B. Nothing herein shall prevent or inhibit the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws, statutes, regulations, or other legal requirements in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

Signed February 5, 2024

Chapter 161

(House Bill 1017)

An Act to adopt the psychology interjurisdictional licensure compact.

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

Section 1. That a NEW SECTION be added to title 36:

PSYCHOLOGY INTERJURISDICTIONAL COMPACT (PSYPACT)

ARTICLE I

PURPOSE

Whereas, states license psychologists, in order to protect the public through verification of education, training and experience and ensure accountability for professional practice; and

Whereas, this Compact is intended to regulate the day to day practice of telepsychology (i.e. the provision of psychological services using telecommunication technologies) by psychologists across state boundaries in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this Compact is intended to regulate the temporary in-person, face-to-face practice of psychology by psychologists across state boundaries for 30 days within a calendar year in the performance of their psychological practice as assigned by an appropriate authority; and

Whereas, this Compact is intended to authorize State Psychology Regulatory Authorities to afford legal recognition, in a manner consistent with the terms of the Compact, to psychologists licensed in another state; and

Whereas, this Compact recognizes that states have a vested interest in protecting the public's health and safety through their licensing and regulation of psychologists and that such state regulation will best protect public health and safety; and

Whereas, this Compact does not apply when a psychologist is licensed in both the Home and Receiving States; and

Whereas, this Compact does not apply to permanent in-person, face-to-face practice, it does allow for authorization of temporary psychological practice.

Consistent with these principles, this Compact is designed to achieve the following purposes and objectives:

1. Increase public access to professional psychological services by allowing for telepsychological practice across state lines as well as temporary in-person, face-to-face services into a state which the psychologist is not licensed to practice psychology;

2. Enhance the states' ability to protect the public's health and safety, especially client/patient safety;

3. Encourage the cooperation of Compact States in the areas of psychology licensure and regulation;

4. Facilitate the exchange of information between Compact States regarding psychologist licensure, adverse actions and disciplinary history;

5. Promote compliance with the laws governing psychological practice in each Compact State; and

6. Invest all Compact States with the authority to hold licensed psychologists accountable through the mutual recognition of Compact State licenses.

ARTICLE II

DEFINITIONS

A. "Adverse Action" means: Any action taken by a State Psychology

Regulatory Authority which finds a violation of a statute or regulation that is identified by the State Psychology Regulatory Authority as discipline and is a matter of public record.

B. "Association of State and Provincial Psychology Boards (ASPPB)" means: the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities responsible for the licensure and registration of psychologists throughout the United States and Canada.

C. "Authority to Practice Interjurisdictional Telepsychology" means: a licensed psychologist's authority to practice telepsychology, within the limits authorized under this Compact, in another Compact State.

D. "Bylaws" means: those Bylaws established by the Psychology Interjurisdictional Compact Commission pursuant to Article X for its governance, or for directing and controlling its actions and conduct.

E. "Client/Patient" means: the recipient of psychological services, whether psychological services are delivered in the context of healthcare, corporate, supervision, and/or consulting services.

F. "Commissioner" means: the voting representative appointed by each State Psychology Regulatory Authority pursuant to Article X.

G. "Compact State" means: a state, the District of Columbia, or United States territory that has enacted this Compact legislation and which has not withdrawn pursuant to Article XIII, Section C or been terminated pursuant to Article XII, Section B.

H. "Coordinated Licensure Information System" also referred to as "Coordinated Database" means: an integrated process for collecting, storing, and sharing information on psychologists' licensure and enforcement activities related to psychology licensure laws, which is administered by the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

I. "Confidentiality" means: the principle that data or information is not made available or disclosed to unauthorized persons and/or processes.

J. "Day" means: any part of a day in which psychological work is performed.

K. "Distant State" means: the Compact State where a psychologist is physically present (not through the use of telecommunications technologies), to provide temporary in-person, face-to-face psychological services.

L. "E.Passport" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that promotes the standardization in the criteria of interjurisdictional telepsychology practice and facilitates the process for licensed psychologists to provide telepsychological services across state lines.

M. "Executive Board" means: a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

N. "Home State" means: a Compact State where a psychologist is licensed to practice psychology. If the psychologist is licensed in more than one Compact State and is practicing under the Authorization to Practice Interjurisdictional Telepsychology, the Home State is the Compact State where the psychologist is physically present when the telepsychological services are delivered. If the psychologist is licensed in more than one Compact State and is practicing under the Temporary Authorization to

Practice, the Home State is any Compact State where the psychologist is licensed.

O. "Identity History Summary" means: a summary of information retained by the Federal Bureau of Investigation, or other designee with similar authority, in connection with arrests and, in some instances, federal employment, naturalization, or military service.

P. "In-Person, Face-to-Face" means: interactions in which the psychologist and the client/patient are in the same physical space and which does not include interactions that may occur through the use of telecommunication technologies.

Q. "Interjurisdictional Practice Certificate (IPC)" means: a certificate issued by the Association of State and Provincial Psychology Boards (ASPPB) that grants temporary authority to practice based on notification to the State Psychology Regulatory Authority of intention to practice temporarily, and verification of one's qualifications for such practice.

R. "License" means: authorization by a State Psychology Regulatory Authority to engage in the independent practice of psychology, which would be unlawful without the authorization.

S. "Non-Compact State" means: any State which is not at the time a Compact State.

T. "Psychologist" means: an individual licensed for the independent practice of psychology.

U. "Psychology Interjurisdictional Compact Commission" also referred to as "Commission" means: the national administration of which all Compact States are members.

V. "Receiving State" means: a Compact State where the client/patient is physically located when the telepsychological services are delivered.

W. "Rule" means: a written statement by the Psychology Interjurisdictional Compact Commission promulgated pursuant to Article XI of the Compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the Compact, or an organizational, procedural, or practice requirement of the Commission and has the force and effect of statutory law in a Compact State, and includes the amendment, repeal or suspension of an existing rule.

X. "Significant Investigatory Information" means:

1. Investigative information that a State Psychology Regulatory Authority, after a preliminary inquiry that includes notification and an opportunity to respond if required by state law, has reason to believe, if proven true, would indicate more than a violation of state statute or ethics code that would be considered more substantial than minor infraction; or

2. Investigative information that indicates that the psychologist represents an immediate threat to public health and safety regardless of whether the psychologist has been notified and/or had an opportunity to respond.

Y. "State" means: a state, commonwealth, territory, or possession of the United States, the District of Columbia.

Z. "State Psychology Regulatory Authority" means: the Board, office or other agency with the legislative mandate to license and regulate the practice of psychology.

AA. "Telepsychology" means: the provision of psychological services using telecommunication technologies.

BB. "Temporary Authorization to Practice" means: a licensed psychologist's authority to conduct temporary in-person, face-to-face practice, within the limits authorized under this Compact, in another Compact State.

CC. "Temporary In-Person, Face-to-Face Practice" means: where a psychologist is physically present (not through the use of telecommunications technologies), in the Distant State to provide for the practice of psychology for 30 days within a calendar year and based on notification to the Distant State.

ARTICLE III

HOME STATE LICENSURE

A. The Home State shall be a Compact State where a psychologist is licensed to practice psychology.

B. A psychologist may hold one or more Compact State licenses at a time. If the psychologist is licensed in more than one Compact State, the Home State is the Compact State where the psychologist is physically present when the services are delivered as authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

C. Any Compact State may require a psychologist not previously licensed in a Compact State to obtain and retain a license to be authorized to practice in the Compact State under circumstances not authorized by the Authority to Practice Interjurisdictional Telepsychology under the terms of this Compact.

D. Any Compact State may require a psychologist to obtain and retain a license to be authorized to practice in a Compact State under circumstances not authorized by Temporary Authorization to Practice under the terms of this Compact.

E. A Home State's license authorizes a psychologist to practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only if the Compact State:

1. Currently requires the psychologist to hold an active E.Passport;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

F. A Home State's license grants Temporary Authorization to Practice to a psychologist in a Distant State only if the Compact State:

1. Currently requires the psychologist to hold an active IPC;

2. Has a mechanism in place for receiving and investigating complaints about licensed individuals;

3. Notifies the Commission, in compliance with the terms herein, of any adverse action or significant investigatory information regarding a licensed individual;

4. Requires an Identity History Summary of all applicants at initial licensure, including the use of the results of fingerprints or other biometric data checks compliant with the requirements of the Federal Bureau of Investigation, or other designee with similar authority, no later than ten years after activation of the Compact; and

5. Complies with the Bylaws and Rules of the Commission.

ARTICLE IV

COMPACT PRIVILEGE TO PRACTICE TELEPSYCHOLOGY

A. Compact States shall recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice telepsychology in other Compact States (Receiving States) in which the psychologist is not licensed, under the Authority to Practice Interjurisdictional Telepsychology as provided in the Compact.

B. To exercise the Authority to Practice Interjurisdictional Telepsychology under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; AND

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three academic years of full-time graduate study for doctoral degree and a minimum of one academic year of full-time graduate study for master's degree;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. Have no history of adverse action that violate the Rules of the Commission;

5. Have no criminal record history reported on an Identity History Summary that violates the Rules of the Commission;

6. Possess a current, active E.Passport;

7. Provide attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology technology; criminal background; and knowledge and adherence to legal requirements in the home and receiving states, and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. The Home State maintains authority over the license of any psychologist practicing into Receiving State under the Authority to Practice Interjurisdictional Telepsychology.

D. A psychologist practicing into a Receiving State under the Authority to Practice Interjurisdictional Telepsychology will be subject to the Receiving State's scope of practice. A Receiving State may, in accordance with that state's due process law, limit or revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology in the Receiving State and may take any other necessary actions under the Receiving State's applicable law to protect the health and safety of the Receiving State's citizens. If a Receiving State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Authority to Practice Interjurisdictional Telepsychology in any Receiving State, is restricted, suspended or otherwise limited, the E.Passport shall be revoked and therefore the psychologist shall not be

eligible to practice telepsychology in a Compact State under the Authority to Practice Interjurisdictional Telepsychology.

ARTICLE V

COMPACT TEMPORARY AUTHORIZATION TO PRACTICE

A. Compact States shall also recognize the right of a psychologist, licensed in a Compact State in conformance with Article III, to practice temporarily in other Compact States (Distant States) in which the psychologist is not licensed, as provided in the Compact.

B. To exercise the Temporary Authorization to Practice under the terms and provisions of this Compact, a psychologist licensed to practice in a Compact State must:

1. Hold a graduate degree in psychology from an institute of higher education that was, at the time the degree was awarded:

a. Regionally accredited by an accrediting body recognized by the U.S. Department of Education to grant graduate degrees, OR authorized by Provincial Statute or Royal Charter to grant doctoral degrees; OR

b. A foreign college or university deemed to be equivalent to 1 (a) above by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or by a recognized foreign credential evaluation service; and

2. Hold a graduate degree in psychology that meets the following criteria:

a. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists;

b. The psychology program must stand as a recognizable, coherent, organizational entity within the institution;

c. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines;

d. The program must consist of an integrated, organized sequence of study;

e. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities;

f. The designated director of the program must be a psychologist and a member of the core faculty;

g. The program must have an identifiable body of students who are matriculated in that program for a degree;

h. The program must include supervised practicum, internship, or field training appropriate to the practice of psychology;

i. The curriculum shall encompass a minimum of three

academic years of full-time graduate study for doctoral degrees and a minimum of one academic year of full-time graduate study for master's degrees;

j. The program includes an acceptable residency as defined by the Rules of the Commission.

3. Possess a current, full and unrestricted license to practice psychology in a Home State which is a Compact State;

4. No history of adverse action that violate the Rules of the Commission;

5. No criminal record history that violates the Rules of the Commission;

6. Possess a current, active IPC;

7. Provide attestations in regard to areas of intended practice and work experience and provide a release of information to allow for primary source verification in a manner specified by the Commission; and

8. Meet other criteria as defined by the Rules of the Commission.

C. A psychologist practicing into a Distant State under the Temporary Authorization to Practice shall practice within the scope of practice authorized by the Distant State.

D. A psychologist practicing into a Distant State under the Temporary Authorization to Practice will be subject to the Distant State's authority and law. A Distant State may, in accordance with that state's due process law, limit or revoke a psychologist's Temporary Authorization to Practice in the Distant State and may take any other necessary actions under the Distant State's applicable law to protect the health and safety of the Distant State's citizens. If a Distant State takes action, the state shall promptly notify the Home State and the Commission.

E. If a psychologist's license in any Home State, another Compact State, or any Temporary Authorization to Practice in any Distant State, is restricted, suspended or otherwise limited, the IPC shall be revoked and therefore the psychologist shall not be eligible to practice in a Compact State under the Temporary Authorization to Practice.

ARTICLE VI

CONDITIONS OF TELEPSYCHOLOGY PRACTICE IN A RECEIVING STATE

A. A psychologist may practice in a Receiving State under the Authority to Practice Interjurisdictional Telepsychology only in the performance of the scope of practice for psychology as assigned by an appropriate State Psychology Regulatory Authority, as defined in the Rules of the Commission, and under the following circumstances:

1. The psychologist initiates a client/patient contact in a Home State via telecommunications technologies with a client/patient in a Receiving State;

2. Other conditions regarding telepsychology as determined by Rules promulgated by the Commission.

ARTICLE VII ADVERSE

ACTIONS

A. A Home State shall have the power to impose adverse action against a psychologist's license issued by the Home State. A Distant State shall have the power to take adverse action on a psychologist's Temporary Authorization to Practice within that Distant State.

B. A Receiving State may take adverse action on a psychologist's Authority to Practice Interjurisdictional Telepsychology within that Receiving State. A Home State may take adverse action against a psychologist based on an adverse action taken by a Distant State regarding temporary in-person, face-to-face practice.

C. If a Home State takes adverse action against a psychologist's license, that psychologist's Authority to Practice Interjurisdictional Telepsychology is terminated and the E.Passport is revoked. Furthermore, that psychologist's Temporary Authorization to Practice is terminated and the IPC is revoked.

1. All Home State disciplinary orders which impose adverse action shall be reported to the Commission in accordance with the Rules promulgated by the Commission. A Compact State shall report adverse actions in accordance with the Rules of the Commission.

2. In the event discipline is reported on a psychologist, the psychologist will not be eligible for telepsychology or temporary in-person, face-to-face practice in accordance with the Rules of the Commission.

3. Other actions may be imposed as determined by the Rules promulgated by the Commission.

D. A Home State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a licensee which occurred in a Receiving State as it would if such conduct had occurred by a licensee within the Home State. In such cases, the Home State's law shall control in determining any adverse action against a psychologist's license.

E. A Distant State's Psychology Regulatory Authority shall investigate and take appropriate action with respect to reported inappropriate conduct engaged in by a psychologist practicing under Temporary Authorization Practice which occurred in that Distant State as it would if such conduct had occurred by a licensee within the Home State. In such cases, Distant State's law shall control in determining any adverse action against a psychologist's Temporary Authorization to Practice.

F. Nothing in this Compact shall override a Compact State's decision that a psychologist's participation in an alternative program may be used in lieu of adverse action and that such participation shall remain non-public if required by the Compact State's law. Compact States must require psychologists who enter any alternative programs to not provide telepsychology services under the Authority to Practice Interjurisdictional Telepsychology or provide temporary psychological services under the Temporary Authorization to Practice in any other Compact State during the term of the alternative program.

G. No other judicial or administrative remedies shall be available to a psychologist in the event a Compact State imposes an adverse action pursuant to subsection C, above.

ARTICLE VIII

ADDITIONAL AUTHORITIES INVESTED IN A COMPACT STATE'S PSYCHOLOGY REGULATORY AUTHORITY

A. In addition to any other powers granted under state law, a Compact State's Psychology Regulatory Authority shall have the authority under this Compact to:

1. Issue subpoenas, for both hearings and investigations, which require the attendance and testimony of witnesses and the production of evidence. Subpoenas issued by a Compact State's Psychology Regulatory Authority for the attendance and testimony of witnesses, and/or the production of evidence from another Compact State shall be enforced in the latter state by any court of competent jurisdiction, according to that court's practice and procedure in considering subpoenas issued in its own proceedings. The issuing State Psychology Regulatory Authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state where the witnesses and/or evidence are located; and

2. Issue cease and desist and/or injunctive relief orders to revoke a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice.

3. During the course of any investigation, a psychologist may not change his/her Home State licensure. A Home State Psychology Regulatory Authority is authorized to complete any pending investigations of a psychologist and to take any actions appropriate under its law. The Home State Psychology Regulatory Authority shall promptly report the conclusions of such investigations to the Commission. Once an investigation has been completed, and pending the outcome of said investigation, the psychologist may change his/her Home State licensure. The Commission shall promptly notify the new Home State of any such decisions as provided in the Rules of the Commission. All information provided to the Commission or distributed by Compact States pursuant to the psychologist shall be confidential, filed under seal and used for investigatory or disciplinary matters. The Commission may create additional rules for mandated or discretionary sharing of information by Compact States.

ARTICLE IX

COORDINATED LICENSURE INFORMATION SYSTEM

A. The Commission shall provide for the development and maintenance of a Coordinated Licensure Information System (Coordinated Database) and reporting system containing licensure and disciplinary action information on all psychologists individuals to whom this Compact is applicable in all Compact States as defined by the Rules of the Commission.

B. Notwithstanding any other provision of state law to the contrary, a Compact State shall submit a uniform data set to the Coordinated Database on all licensees as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Significant investigatory information;

4. Adverse actions against a psychologist's license;

5. An indicator that a psychologist's Authority to Practice Interjurisdictional Telepsychology and/or Temporary Authorization to Practice is revoked;

6. Non-confidential information related to alternative program participation information;

7. Any denial of application for licensure, and the reasons for such denial; and

8. Other information which may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. The Coordinated Database administrator shall promptly notify all Compact States of any adverse action taken against, or significant investigative information on, any licensee in a Compact State.

D. Compact States reporting information to the Coordinated Database may designate information that may not be shared with the public without the express permission of the Compact State reporting the information.

E. Any information submitted to the Coordinated Database that is subsequently required to be expunged by the law of the Compact State reporting the information shall be removed from the Coordinated Database.

ARTICLE X

ESTABLISHMENT OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION

A. The Compact States hereby create and establish a joint public agency known as the Psychology Interjurisdictional Compact Commission.

1. The Commission is a body politic and an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. The Commission shall consist of one voting representative appointed by each Compact State who shall serve as that state's Commissioner. The State Psychology Regulatory Authority shall appoint its delegate. This delegate shall be empowered to act on behalf of the Compact State. This delegate shall be limited to:

a. Executive Director, Executive Secretary or similar executive;

b. Current member of the State Psychology Regulatory Authority of a Compact State; or

c. Designee empowered with the appropriate delegate authority to act on behalf of the Compact State.

2. Any Commissioner may be removed or suspended from office as provided by the law of the state from which the Commissioner is appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compact State in which the vacancy exists.

3. Each Commissioner shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of Bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission. A Commissioner shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Commissioners' participation in meetings by telephone or other means of communication.

4. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

5. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the rulemaking provisions in Article XI.

6. The Commission may convene in a closed, non-public meeting if the Commission must discuss:

a. Non-compliance of a Compact State with its obligations under the Compact;

b. The employment, compensation, discipline or other personnel matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation against the Commission;

d. Negotiation of contracts for the purchase or sale of goods, services or real estate;

e. Accusation against any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information which is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigatory records compiled for law enforcement purposes;

i. Disclosure of information related to any investigatory reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility for investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal and state statute.

7. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision. The Commission shall keep minutes which fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, of any person participating in the meeting, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release only by a majority vote of the Commission or order of a court of competent jurisdiction.

C. The Commission shall, by a majority vote of the Commissioners, prescribe Bylaws and/or Rules to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the Compact, including but not limited to:

1. Establishing the fiscal year of the Commission;

2. Providing reasonable standards and procedures:

a. For the establishment and meetings of other committees; and

b. Governing any general or specific delegation of any authority or function of the Commission;

3. Providing reasonable procedures for calling and conducting meetings of the Commission, ensuring reasonable advance notice of all meetings and providing an opportunity for attendance of such meetings by interested parties, with enumerated exceptions designed to protect the public's interest, the privacy of individuals of such proceedings, and proprietary information, including trade secrets. The Commission may meet in closed session only after a majority of the Commissioners vote to close a meeting to the public in whole or in part. As soon as practicable, the Commission must make public a copy of the vote to close the meeting revealing the vote of each Commissioner with no proxy votes allowed;

4. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;

5. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar law of any Compact State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;

6. Promulgating a Code of Ethics to address permissible and prohibited activities of Commission members and employees;

7. Providing a mechanism for concluding the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

8. The Commission shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compact States;

9. The Commission shall maintain its financial records in accordance with the Bylaws; and

10. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.

D. The Commission shall have the following powers:

1. The authority to promulgate uniform rules to facilitate and coordinate implementation and administration of this Compact. The rule shall have the force and effect of law and shall be binding in all Compact States;

2. To bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Psychology Regulatory Authority or other regulatory body responsible for psychology licensure to sue or be sued under applicable law shall not be affected;

3. To purchase and maintain insurance and bonds;

4. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compact State;

5. To hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and to establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

6. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that at all times the Commission shall strive to avoid any appearance of impropriety and/or conflict of interest;

7. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall strive to avoid any appearance of impropriety;

8. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

9. To establish a budget and make expenditures;

10. To borrow money;

11. To appoint committees, including advisory committees comprised of Members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the Bylaws;

12. To provide and receive information from, and to cooperate with, law enforcement agencies;

13. To adopt and use an official seal; and

14. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of psychology licensure, temporary in-person, face-to-face practice and telepsychology practice.

E. The Executive Board

The elected officers shall serve as the Executive Board, which shall have the power to act on behalf of the Commission according to the terms of this Compact.

1. The Executive Board shall be comprised of six members:

   a. Five voting members who are elected from the current membership of the Commission by the Commission;

   b. One ex-officio, nonvoting member from the recognized membership organization composed of State and Provincial Psychology Regulatory Authorities.

2. The ex-officio member must have served as staff or member on a State Psychology Regulatory Authority and will be selected by its respective organization.

3. The Commission may remove any member of the Executive Board as provided in Bylaws.

4. The Executive Board shall meet at least annually.

5. The Executive Board shall have the following duties and responsibilities:

   a. Recommend to the entire Commission changes to the Rules or Bylaws, changes to this Compact legislation, fees paid by Compact States such as annual dues, and any other applicable fees;

   b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

   c. Prepare and recommend the budget;

   d. Maintain financial records on behalf of the Commission;

   e. Monitor Compact compliance of member states and provide compliance reports to the Commission;

   f. Establish additional committees as necessary; and

   g. Other duties as provided in Rules or Bylaws.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations and grants of money, equipment, supplies, materials and services.

3. The Commission may levy on and collect an annual assessment from each Compact State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission which shall promulgate a rule binding upon all Compact States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Compact States, except by and with the authority of the Compact State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its Bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, Executive Director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, Executive Director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, Executive Director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, provided that the actual or alleged act, error or omission did not result from the intentional or willful or wanton misconduct of that person.

ARTICLE XI

RULEMAKING

A. The Commission shall exercise its rulemaking powers pursuant to the criteria set forth in this Article and the Rules adopted thereunder. Rules

and amendments shall become binding as of the date specified in each rule or amendment.

B. If a majority of the legislatures of the Compact States rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the Compact, then such rule shall have no further force and effect in any Compact State.

C. Rules or amendments to the rules shall be adopted at a regular or special meeting of the Commission.

D. Prior to promulgation and adoption of a final rule or Rules by the Commission, and at least sixty (60) days in advance of the meeting at which the rule will be considered and voted upon, the Commission shall file a Notice of Proposed Rulemaking:

1. On the website of the Commission; and

2. On the website of each Compact States' Psychology Regulatory Authority or the publication in which each state would otherwise publish proposed rules.

E. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the rule will be considered and voted upon;

2. The text of the proposed rule or amendment and the reason for the proposed rule;

3. A request for comments on the proposed rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

F. Prior to adoption of a proposed rule, the Commission shall allow persons to submit written data, facts, opinions and arguments, which shall be made available to the public.

G. The Commission shall grant an opportunity for a public hearing before it adopts a rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons who submit comments independently of each other;

2. A governmental subdivision or agency; or

3. A duly appointed person in an association that has having at least twenty-five (25) members.

H. If a hearing is held on the proposed rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing.

1. All persons wishing to be heard at the hearing shall notify the Executive Director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. No transcript of the hearing is required, unless a written request for a transcript is made, in which case the person requesting the transcript shall bear the cost of producing the transcript. A recording may be made in lieu of a transcript under the same terms and conditions as a transcript. This subsection shall not preclude the Commission from making a transcript or recording of the hearing if it so chooses.

4. Nothing in this section shall be construed as requiring a separate hearing on each rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

I. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

J. The Commission shall, by majority vote of all members, take final action on the proposed rule and shall determine the effective date of the rule, if any, based on the rulemaking record and the full text of the rule.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed rule without a public hearing.

L. Upon determination that an emergency exists, the Commission may consider and adopt an emergency rule without prior notice, opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Compact State funds;

3. Meet a deadline for the promulgation of an administrative rule that is established by federal law or rule; or

4. Protect public health and safety.

M. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made in writing, and delivered to the Chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

ARTICLE XII

OVERSIGHT, DISPUTE RESOLUTION AND ENFORCEMENT

A. Oversight

1. The Executive, Legislative and Judicial branches of state government in each Compact State shall enforce this Compact

and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the rules in any judicial or administrative proceeding in a Compact State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding, and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact or promulgated rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Compact State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated rules, the Commission shall:

a. Provide written notice to the defaulting state and other Compact States of the nature of the default, the proposed means of remedying the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

2. If a state in default fails to remedy the default, the defaulting state may be terminated from the Compact upon an affirmative vote of a majority of the Compact States, and all rights, privileges and benefits conferred by this Compact shall be terminated on the effective date of termination. A remedy of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

3. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be submitted by the Commission to the Governor, the majority and minority leaders of the defaulting state's legislature, and each of the Compact States.

4. A Compact State which has been terminated is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, including obligations which extend beyond the effective date of termination.

5. The Commission shall not bear any costs incurred by the state which is found to be in default or which has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting state.

6. The defaulting state may appeal the action of the Commission by petitioning the U.S. District Court for the State of Georgia or the federal district where the Compact has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

C. Dispute Resolution

1. Upon request by a Compact State, the Commission shall attempt to resolve disputes related to the Compact which arise among Compact States and between Compact and Non-Compact States.

2. The Commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes that arise before the commission.

D. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the State of Georgia or the federal district where the Compact has its principal offices against a Compact State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and Bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or state law.

ARTICLE XIII

DATE OF IMPLEMENTATION OF THE PSYCHOLOGY INTERJURISDICTIONAL COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENTS

A. The Compact shall come into effect on the date on which the Compact is enacted into law in the seventh Compact State. The provisions which become effective at that time shall be limited to the powers granted to the Commission relating to assembly and the promulgation of rules. Thereafter, the Commission shall meet and exercise rulemaking powers necessary to the implementation and administration of the Compact.

B. Any state which joins the Compact subsequent to the Commission's initial adoption of the rules shall be subject to the rules as they exist on the date on which the Compact becomes law in that state. Any rule which has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that state.

C. Any Compact State may withdraw from this Compact by enacting a statute repealing the same.

1. A Compact State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Psychology Regulatory Authority to comply with the investigative and adverse action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any psychology licensure agreement or other cooperative arrangement between a Compact State and a Non-Compact State which does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Compact States. No amendment to this Compact shall become effective and binding upon any Compact State until it is enacted into the law of all Compact States.

ARTICLE XIV

CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. If this Compact shall be held contrary to the constitution of any state member thereto, the Compact shall remain in full force and effect as to the remaining Compact States.

Signed February 12, 2024

Chapter 162

(Senate Bill 151)

An Act to revise and repeal provisions related to the licensure of athletic trainers.

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

Section 1. That § 36-29-1 be AMENDED:

36-29-1. Terms used in this chapter~~, unless the context otherwise requires,~~ mean:

(1) "Athletic trainer," a ~~person with specific qualifications as set forth in § 36-29-3, whose responsibility is the prevention, evaluation, emergency care, treatment, and reconditioning of athletic injuries under the direction of the team or treating physician. The athletic trainer may use cryotherapy, which includes cold packs, ice packs, cold water immersion, and spray coolants; thermotherapy, which includes topical analgesics, moist hot packs, heating pads, infrared lamp, and paraffin bath; hydrotherapy, which includes whirlpool; and therapeutic exercise common to athletic training which includes stretching and those exercises needed to maintain condition; in accordance with a physician's written protocol. Any rehabilitative procedures recommended by a physician for the rehabilitation of athletic injuries which have been referred and all other physical modalities may be administered only following the prescription of the team or referring physician~~ health care professional who is licensed by the board to practice athletic training; and

(2) "Board," the State Board of Medical and Osteopathic Examiners ~~as created by chapter 36-4~~.

Section 2. That a NEW SECTION be added to chapter 36-29:

The practice of athletic training is the care, treatment, and prevention, under the direction of and under guidelines established by a physician licensed pursuant to chapter 36-4, of athletic injuries, illnesses, or conditions:

(1) That are related to, or that limit participation in, exercise, athletic activities, recreational activities, or activities requiring physical strength, agility, flexibility, range of motion, speed, or stamina; and

(2) For which an athletic trainer, as a result of the athletic trainer's education and training, is qualified to provide care and to make referrals to an appropriate health care professional.

Section 3. That § 36-29-2 be AMENDED:

36-29-2. It is a Class 2 misdemeanor for any ~~person~~ individual to practice or attempt to practice ~~any of the activities of an athletic trainer~~ athletic training without first obtaining a license pursuant to this chapter.

Nothing in this chapter may be construed to prevent ~~any person from serving as a student trainer, teacher trainer, coach, or similar position, if that service is not primarily for compensation~~ or restrict the:

(1) Activities of a student pursuing a supervised course of study leading to a degree or licensure in athletic training; or

(2) Practice of an individual:

(a) Employed by or affiliated with an individual or athletic team from a different state or jurisdiction temporarily practicing or competing in this state; and

(b) Who only practices on the individual or members of the athletic team that the individual is employed or affiliated with.

Section 4. That § 36-29-3 be AMENDED:

36-29-3. The ~~Board of Medical and Osteopathic Examiners~~ board shall issue ~~an athletic trainer~~ a license to ~~any applicant~~ practice athletic training to an individual who:

(1) ~~Has a baccalaureate degree and has met the athletic training course requirements of a college or university approved by the board~~Submits an application prescribed by the board; ~~and~~

(2) ~~Has passed an examination~~Submits an application fee in an amount established by the board; and

(3) Presents evidence satisfactory to the board that:

(a) The individual has completed all qualifications established by the Board of Certification for the Athletic Trainer and has passed a nationally accredited exam approved by the ~~board~~ State Board of Medical and Osteopathic Examiners; or

(b) The individual is certified in good standing by the Board of Certification for the Athletic Trainer.

Section 5. That § 36-29-6 be AMENDED:

36-29-6. The ~~Board of Medical and Osteopathic Examiners~~ board shall promulgate rules, pursuant to chapter 1-26, to set ~~the fees to be paid by an applicant to determine his fitness to receive a license to practice athletic training. The fees may not exceed one hundred dollars~~:

(1) Application fees, not to exceed one hundred dollars; and

(2) Licensure renewal fees, not to exceed fifty dollars.

Section 6. That § 36-29-8 be AMENDED:

36-29-8. The board shall appoint an athletic training committee

composed of three athletic trainers who are residents of this state ~~who are licensed to practice athletic training in the state~~. ~~This~~ The committee shall meet at least annually or as necessary to conduct business. The committee shall assist the board ~~in conducting exams and shall assist the board~~ in all matters pertaining to the licensure, practice, and discipline of ~~those licensed to practice~~ athletic ~~training~~ trainers in this state and the establishment of rules pertaining to athletic training.

Each committee member shall serve a term of three years. No committee member may be appointed to more than three consecutive, full terms. If a vacancy arises due to death, retirement, or removal from the state, the vacancy ~~shall~~ must be filled in the same manner as an original appointment. The member shall serve the remainder of the unexpired term. The appointment to an unexpired term is not considered a full term. The committee shall meet the requirements of chapter 1-25 regarding open meetings.

Section 7. That § 36-29-11 be AMENDED:

36-29-11. ~~Any~~ A license issued by the ~~Board of Medical and Osteopathic Examiners shall expire~~ board pursuant to this chapter expires on ~~the first day of July~~ December thirty-first of the first year following its issuance.

A license may be renewed ~~every year~~ upon ~~the payment~~:

(1) Payment of ~~a~~ the renewal fee set by the board~~, by rule promulgated pursuant to chapter 1-26. The fee may not exceed fifty dollars~~; and

(2) Submission of evidence, satisfactory to the board, that the athletic trainer has completed the requirements referenced in § 36-29-14.

Section 8. That § 36-29-14 be AMENDED:

36-29-14. ~~Continuity education shall be prescribed pursuant to chapter 1-26 by the Board of Medical and Osteopathic Examiners as a further requirement for renewal of any license. In no instance may the board require a greater number of hours of annual continuing education study than are available within the state and are approved by the board. The board may waive the continuing education requirement in case of certified illness or undue hardship~~In order to renew a license, an athletic trainer must:

(1) Complete the amount of continuing education hours required by the board in rules promulgated pursuant to chapter 1-26, but which may not exceed twenty-five; or

(2) Have current certification from the Board of Certification for the Athletic Trainer.

The board shall promulgate rules, pursuant to chapter 1-26, to establish acceptable forms of continuing education.

Section 9. That § 36-29-15 be AMENDED:

36-29-15. ~~Failure of a licensee to renew a license on or before the first day of July of the year of expiration constitutes a forfeiture of the license. Any person who has forfeited a~~ The board may renew an expired license ~~under this chapter may have it restored by making~~ if the individual submits a written application ~~and by payment of~~ and pays the renewal fee for the current term. ~~However, late renewal of a license may not be granted more than five years after its expiration.~~ The board may establish~~, pursuant to § 36-29-14,~~ additional continuing education requirements for late license renewals.

The board may not renew an expired license under this section if the license is expired for more than five years.

Section 10. That § 36-29-17 be AMENDED:

36-29-17. The ~~Board of Medical and Osteopathic Examiners may adopt~~ board shall promulgate rules ~~and regulations that set~~, pursuant to chapter 1-26, to:

(1) Set standards for the professional practice ~~for licensed~~ of athletic trainers;

(2) Establish a code of ethics for athletic trainers; and ~~other~~

(3) Establish other rules ~~and regulations~~ as may be reasonably necessary for the administration of this chapter and to carry out its purpose. ~~All rules and regulations made by the board pursuant to this chapter shall be adopted and amended in accordance with the provisions of chapter 1-26.~~

Section 11. That § 36-29-18 be AMENDED:

36-29-18. The board may revoke, suspend, or cancel the license of an athletic trainer ~~may be revoked, suspended, or canceled~~ upon any one of these grounds:

(1) The ~~licensee~~ athletic trainer is guilty of fraud in the practice of athletic training or fraud or deceit in the ~~licensee's~~ athletic trainer's admission to the practice of athletic training;

(2) The ~~licensee~~ athletic trainer has been convicted of a felony during the past five years. The conviction of a felony is the conviction of any offense, which if committed within ~~the State of South Dakota~~ this state would constitute a felony under its laws;

(3) The ~~licensee~~ athletic trainer is engaged in the practice of athletic training under a false or assumed name and has not registered that name pursuant to chapter 37-11, or is impersonating another practitioner of a like or different name;

(4) The ~~licensee~~ athletic trainer is addicted to the habitual use of intoxicating liquors, narcotics, or stimulants to the extent as to incapacitate the ~~licensee~~ athletic trainer from the performance of the ~~licensee's~~ athletic trainer's professional duties;

(5) The physical or mental condition of the ~~licensee~~ athletic trainer is determined by a medical examiner to be such as to jeopardize or endanger those who seek relief from the ~~licensee~~ athletic trainer. A majority of the ~~Board of Medical and Osteopathic Examiners~~ board may demand an examination of the ~~licensee~~ athletic trainer by a competent medical examiner selected by the board at the board's expense. If the ~~licensee~~ athletic trainer fails to submit to the examination, this constitutes immediate grounds for suspension of the ~~licensee's~~ license;

(6) The ~~licensee~~ athletic trainer obtains or attempts to obtain a license~~,~~ ~~certificate,~~ or renewal thereof by bribery or fraudulent representation; or

(7) ~~The licensee receives direct compensation from individuals or third-party payees for services rendered. However, a licensee may receive compensation from any entity sponsoring an athletic event for athletic training services provided to athletes participating in the event. For the purposes of this subdivision, direct compensation is compensation other than that received by the employing institution or athletic organization;~~

~~(8) The licensee makes a false statement in connection with any application under this chapter;~~

~~(9) The licensee makes a false statement on any form prescribed by the board pursuant to this chapter or the rules promulgated by the board pursuant to this chapter;~~

~~(10) The licensee conducts continued treatment and rehabilitation procedures on individuals other than those associated with the employing institution or athletic organization; or~~

~~(11)~~ The ~~licensee~~ athletic trainer has violated any provision of this chapter or the rules promulgated pursuant to this chapter.

Section 12. That § 36-29-20 be AMENDED:

36-29-20. ~~All~~ A majority of the members of the board must be present at proceedings relative to the cancellation, revocation, or suspension of a license, or relative to reissuing a license ~~which~~ that has been canceled, revoked, or suspended ~~shall only be held when a majority of the members of the Board of Medical and Osteopathic Examiners are present at the hearings~~. ~~The~~ A decision of the board to suspend, revoke, ~~or~~ cancel, or reissue a license requires a majority vote of ~~all~~ the board members.

Section 13. That § 36-29-27 be AMENDED:

36-29-27. ~~Any person violating~~ If it appears, from evidence satisfactory to the board, that an individual has violated the provisions of this chapter ~~may be enjoined from further violations by a suit brought by the state's attorney of the county wherein the violations occurred or suit may be brought by any citizen of this state~~, or that an athletic trainer has committed unprofessional or dishonorable conduct or is incompetent, the board may apply for an injunction in any court of competent jurisdiction to restrain the individual or athletic trainer from continuing to practice.

An ~~action~~ application for an injunction is an ~~alternate~~ alternative to criminal proceedings, and the commencement of one proceeding by the ~~Board of Medical and Osteopathic Examiners~~ board constitutes an election.

Section 14. That § 36-29-3.1 be REPEALED.

~~The board may grant a temporary permit to any applicant who has completed the education requirements of this chapter. Any applicant granted a temporary permit shall practice as an athletic trainer only under the supervision or oversight of a licensed physician, a licensed physical therapist, or a licensed athletic trainer. The temporary permit is valid for one hundred eighty days.~~

Section 15. That § 36-29-5 be REPEALED.

~~An applicant is exempt from the examination required by this chapter if:~~

~~(1) He satisfies the Board of Medical and Osteopathic Examiners that he is licensed or registered under the laws of a state or territory of the United States that imposes substantially the same requirements as those imposed by this chapter; and~~

~~(2) Pursuant to the laws of that state or territory, he has taken and passed an examination similar to that for which exemption is sought; and~~

~~(3) He has been certified by any national athletic trainer's organization to which the board has extended reciprocity.~~

Section 16. That § 36-29-7 be REPEALED.

~~If a majority of the board members have reason to suspect that the physical or mental health of any applicant will jeopardize or endanger those who seek assistance from him, the Board of Medical and Osteopathic Examiners shall require the applicant to have a physical examination by a medical examiner selected by the board. The board shall pay the cost of the examination. If the medical examiner confirms that the person's physical or mental health will jeopardize or endanger those who seek relief from the applicant, the board may deny the application for a license until the applicant furnishes satisfactory proof of being physically and mentally competent to practice athletic training.~~

Section 17. That § 36-29-9 be REPEALED.

~~The Board of Medical and Osteopathic Examiners shall hold at least one examination each year and may hold additional examinations from time to time at places designated by the board.~~

Section 18. That § 36-29-10 be REPEALED.

~~Any applicant failing to pass the examination provided by this chapter may, within one year, be reexamined upon payment of an additional fee to be set by the Board of Medical and Osteopathic Examiners. Two reexaminations shall exhaust the privilege under the original application.~~

Section 19. That § 36-29-12 be REPEALED.

~~Each athletic trainer licensee shall be conspicuously displayed at the place of practice of the licensee within thirty days after issuance of the license.~~

Section 20. That § 36-29-13 be REPEALED.

~~The Board of Medical and Osteopathic Examiners shall annually publish a list of names and addresses of all licensed athletic trainers.~~

Section 21. That § 36-29-22 be REPEALED.

~~Any party feeling aggrieved by any acts, rulings, or decisions of the Board of Medical and Osteopathic Examiners relating to refusal to grant or to cancellation, revocation, or suspension of a license may appeal pursuant to chapter 1-26.~~

Section 22. That § 36-29-23 be REPEALED.

~~Upon written application establishing compliance with existing licensing requirements and for reasons the Board of Medical and Osteopathic Examiners deems sufficient, the board, for good cause shown, by majority vote, may, under the conditions it may impose, reinstate or reissue a license to any person whose license has been canceled, suspended, or revoked. Upon suspension of a license, the board may provide for automatic reinstatement thereof after a specified fixed period of time.~~

Section 23. That § 36-29-24 be REPEALED.

~~The secretary of the Board of Medical and Osteopathic Examiners shall keep a record book in which are entered the names of all persons to whom licenses have been granted under this chapter, the license number of each, and the date of granting the license and its renewal and other matters of record. This book is a book of records, and a transcript of any record therein or a license that is not entered therein, the name and license number of the date of granting the license~~

~~to a person charged with a violation of any of the provisions of this chapter, certified under the hand of the secretary, and the seal of the board, shall be admitted as evidence in any of the courts of this state. The original books, records, and papers of the board shall be kept at the office of the secretary of the board. The secretary shall furnish any person making an application a copy of any requested record, certified by him as secretary, upon payment of a fee of twenty-five cents per page.~~

Section 24. That § 36-29-29 be REPEALED.

~~The total expense incurred by the Board of Medical and Osteopathic Examiners may not exceed the total money collected by the board under the provisions of this chapter.~~

Section 25. That § 36-29-30 be REPEALED.

~~Any person actively engaged as an athletic trainer in the state on July 1, 1984, shall be issued a license if he submits proof of experience and credentials during the previous twelve months satisfactory to the initial athletic training advisory committee of this board, has a baccalaureate degree and if he pays the license fee required by this chapter. For the purpose of this section a person is actively engaged as an athletic trainer if he is employed as an athletic trainer by an educational institution for the duration of the institution's year or performs the duties of an athletic trainer as a major responsibility of his employment by a professional athletic organization or other athletic organization for the length of the athletic organization's season or meets equivalent criteria as determined by the board. No application for licensure under this section may be permitted after July 1, 1985.~~

Signed March 13, 2024

Chapter 163

(Senate Bill 40)

An Act to establish a criminal background check requirement for licensure as an occupational therapist or occupational therapy assistant.

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

Section 1. That chapter 36-31 be amended with a NEW SECTION:

In addition to the requirements in § 36-31-6, an applicant for licensure as an occupational therapist or an occupational therapy assistant shall submit to the board of examiners a full set of the applicant's fingerprints in a form and manner prescribed by the board. The board of examiners shall deliver the fingerprints to the Division of Criminal Investigation to conduct a state and federal criminal background check by the division and the Federal Bureau of Investigation. The applicant shall sign a release of information to the board of examiners and pay any fees for the background check, including fingerprinting.

Upon completion of the background check, the division shall deliver to the board of examiners the applicant's criminal history record information. The board of examiners shall consider this information in determining whether to issue a license to the applicant. The board of examiners may not issue a license to the applicant before receiving this information.

The board of examiners may not disseminate an applicant's criminal history record information to any person outside the board. The board of examiners may require any licensee who is the subject of a disciplinary investigation by the board to submit to a state and federal criminal history record background check.

The board of examiners may deny the issuance of a license or suspend or revoke a license for failure to submit to or cooperate with a criminal background check.

Signed February 21, 2024

Chapter 164

(House Bill 1012)

An Act to adopt the interstate counseling licensure compact and revise educational requirements to comply with the compact.

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

Section 1. That § 36-32-64 be AMENDED:

36-32-64. An applicant for a license as a professional counselor shall file an application, in the manner prescribed by the board, together with the application fee prescribed by the board in accordance with § 36-32-92. The board may issue a license as a professional counselor to an applicant who pays the license fee and demonstrates that:

(1) The applicant has received a master's or a doctoral degree, consisting of at least ~~forty-eight~~:

(a) Forty-eight credit hours in counseling from an accredited counseling program recognized by the board, if the applicant began the program before July 1, 2024; or

(b) Sixty credit hours in counseling from an accredited counseling program recognized by the board, if the applicant began the program on or after July 1, 2024;

(2) The applicant has passed the National Counselor Examination administered by the National Board for Certified Counselors;

(3) Within the four years preceding the application, the applicant completed two thousand hours of postgraduate supervision, in a manner prescribed by the board, in counseling under a plan of supervision approved by the board;

(4) The applicant has no pending disciplinary proceeding or unresolved disciplinary complaint;

(5) The applicant is of good moral character; and

(6) The applicant is not in violation of any provision of this chapter or any rule promulgated under this chapter.

The board may refuse to grant a license to an applicant who fails to meet the requirements of this section.

Notwithstanding the provisions of subdivision (3), the board may grant a license, to an applicant who does not complete the required postgraduate supervision within four years of the application upon the applicant's show of good cause for exceeding the time limit.

Notwithstanding the provisions of subdivision (5), the board may grant a license to an applicant who has been convicted of or pled guilty to a felony, to any crime involving or relating to the practice of counseling, or to any crime involving dishonesty or moral turpitude, if the board determines that the applicant does not constitute a risk to public safety.

An applicant may appeal the denial of a license in accordance with chapter 1-26.

Section 2. That chapter 36-32 be amended with a NEW SECTION:

Notwithstanding subsection 36-32-64(1)(b), the board may issue a license as a professional counselor to an applicant who has received a master's or a doctoral degree, consisting of less than sixty credit hours but no less than forty-eight credit hours in counseling, from an accredited counseling program recognized by the board, if the applicant otherwise satisfies the requirements for licensure in § 36-32-64.

An applicant who is issued a license as a professional counselor under this section is not eligible to participate in the counseling licensure compact adopted by section 7 of this Act.

Section 3. That § 36-32-65 be AMENDED:

36-32-65. An applicant for a license as a professional counselor--mental health shall file an application, in the manner prescribed by the board, together with the application fee prescribed by the board in accordance with § 36-32-92. The board may issue a license as a professional counselor--mental health to an applicant who pays the license fee and demonstrates that:

(1) The applicant has obtained licensure as a professional counselor under § 36-32-64;

(2) The applicant has received a master's or a doctoral degree, consisting of at least ~~forty-eight~~:

(a) Forty-eight credit hours in counseling, ~~with an emphasis on mental health counseling,~~ if the applicant began the program before July 1, 2024; or

(b) Sixty credit hours in counseling, if the applicant began the program on or after July 1, 2024;

(3) The applicant's master's or doctoral degree is from a counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs or an equivalent program, with an emphasis on mental health counseling as demonstrated by studies in the following areas:

(a) The general principles and practices of etiology, diagnosis, treatment, and prevention of mental and emotional disorders and dysfunctional behavior;

(b) The general principles and practices for the promotion of optimal mental health;

(c) The specific models and methods for assessing mental status;

(d) The identification of mental illness or abnormal, deviant, or psychopathologic behavior by obtaining appropriate behavioral data using a variety of techniques, including nonprojective personality assessments and achievement, aptitude, and intelligence testing, and translating findings into the Diagnostic and Statistical Manual of Mental Disorders;

(e) The specific theories of psychotherapy for initiating, maintaining, and terminating therapy with a mentally and emotionally impaired client or a client with disabilities in a variety of settings using a variety of modalities, including crisis intervention, brief, intermediate, and long-term modalities;

(f) The basic classification, indications, and contraindications of the commonly prescribed psychopharmacological medications for the purpose of identifying the effects and side effects of prescribed psychotropic medications;

(g) The guidelines for conducting an intake interview and mental health history for planning and managing of client caseload; and

(h) The specific concepts and ideas related to mental health education, outreach, prevention, and mental health promotion;

~~(3)~~(4) The applicant has passed the National Clinical Mental Health Counseling Examination administered by the National Board for Certified Counselors;

~~(4)~~(5) Within the four years preceding the application, the applicant completed two thousand hours of direct client contact postgraduate supervision in counseling, in a manner prescribed by the board, under a plan of supervision approved by the board;

~~(5)~~(6) The applicant has no pending disciplinary proceeding or unresolved disciplinary complaint;

~~(6)~~(7) The applicant is of good moral character; and

~~(7)~~(8) The applicant is not in violation of any provision of this chapter or any rule promulgated under this chapter.

The board may refuse to grant a license to an applicant who fails to meet the requirements of this section.

Notwithstanding the provisions of subdivision (5), the board may grant a license to an applicant who does not complete the required postgraduate supervision within four years of the application upon the applicant's show of good cause for exceeding the time limit.

Notwithstanding the provisions of subdivision (7), the board may grant a license to an applicant who has been convicted of or pled guilty to a felony, to any crime involving or relating to the practice of counseling, or to any crime involving dishonesty or moral turpitude if the board determines that the applicant does not constitute a risk to public safety.

An applicant may appeal the denial of a license in accordance with chapter 1-26.

Section 4. That chapter 36-32 be amended with a NEW SECTION:

Notwithstanding subsection 36-32-65(2)(b), the board may issue a license as a professional counselor--mental health to an applicant who has received a master's or a doctoral degree, consisting of less than sixty credit hours but no less than forty-eight credit hours in counseling, if the applicant otherwise satisfies the

requirements for licensure in § 36-32-65.

An applicant who is issued a license as a professional counselor--mental health under this section is not eligible to participate in the counseling licensure compact adopted by section 7 of this Act.

Section 5. That a NEW SECTION be added to chapter 36-32:

The board shall implement procedures for the completion of a state and federal fingerprint-based criminal background check for a licensee seeking to participate in the counseling licensure compact adopted by section 7 of this Act. The licensee must pay any fee for the cost of fingerprinting or conducting the background check.

Section 6. That a NEW SECTION be added to title 36:

An individual licensed as a professional counselor, in accordance with § 36-32-64, or a professional counselor--mental health, in accordance with § 36-32-65, before July 1, 2024, or an individual practicing under a board-approved plan of supervision in accordance with chapter 36-32 before July 1, 2024, is eligible to participate in the counseling licensure compact adopted by section 7 of this Act.

Section 7. That a NEW SECTION be added to title 36:

COUNSELING LICENSURE COMPACT

SECTION 1: PURPOSE

The purpose of this Compact is to facilitate interstate practice of Licensed Professional Counselors with the goal of improving public access to Professional Counseling services. The practice of Professional Counseling occurs in the State where the client is located at the time of the counseling services. The Compact preserves the regulatory authority of States to protect public health and safety through the current system of State licensure.

This Compact is designed to achieve the following objectives:

A. Increase public access to Professional Counseling services by providing for the mutual recognition of other Member State licenses;

B. Enhance the States' ability to protect the public's health and safety;

C. Encourage the cooperation of Member States in regulating multistate practice for Licensed Professional Counselors;

D. Support spouses of relocating Active Duty Military personnel;

E. Enhance the exchange of licensure, investigative, and disciplinary information among Member States;

F. Allow for the use of Telehealth technology to facilitate increased access to Professional Counseling services;

G. Support the uniformity of Professional Counseling licensure requirements throughout the States to promote public safety and public health benefits;

H. Invest all Member States with the authority to hold a Licensed Professional Counselor accountable for meeting all State practice laws in the State in which the client is located at the time care is rendered through the mutual recognition of Member State licenses;

I. Eliminate the necessity for licenses in multiple States; and

J. Provide opportunities for interstate practice by Licensed Professional Counselors who meet uniform licensure requirements.

SECTION 2: DEFINITIONS

As used in this Compact, and except as otherwise provided, the following definitions shall apply:

A. "Active Duty Military" means full-time duty status in the active uniformed service of the United States, including members of the National Guard and Reserve on active duty orders pursuant to 10 U.S.C. Chapters 1209 and 1211.

B. "Adverse Action" means any administrative, civil, equitable or criminal action permitted by a State's laws which is imposed by a licensing board or other authority against a Licensed Professional Counselor, including actions against an individual's license or Privilege to Practice such as revocation, suspension, probation, monitoring of the licensee, limitation on the licensee's practice, or any other Encumbrance on licensure affecting a Licensed Professional Counselor's authorization to practice, including issuance of a cease and desist action.

C. "Alternative Program" means a non-disciplinary monitoring or practice remediation process approved by a Professional Counseling Licensing Board to address Impaired Practitioners.

D. "Continuing Competence/Education" means a requirement, as a condition of license renewal, to provide evidence of participation in, and/or completion of, educational and professional activities relevant to practice or area of work.

E. "Counseling Compact Commission" or "Commission" means the national administrative body whose membership consists of all States that have enacted the Compact.

F. "Current Significant Investigative Information" means:

1. Investigative Information that a Licensing Board, after a preliminary inquiry that includes notification and an opportunity for the Licensed Professional Counselor to respond, if required by State law, has reason to believe is not groundless and, if proved true, would indicate more than a minor infraction; or

2. Investigative Information that indicates that the Licensed Professional Counselor represents an immediate threat to public health and safety regardless of whether the Licensed Professional Counselor has been notified and had an opportunity to respond.

G. "Data System" means a repository of information about Licensees, including, but not limited to, continuing education, examination, licensure, investigative, Privilege to Practice and Adverse Action information.

H. "Encumbered License" means a license in which an Adverse Action restricts the practice of licensed Professional Counseling by the Licensee and said Adverse Action has been reported to the National Practitioners Data Bank (NPDB).

I. "Encumbrance" means a revocation or suspension of, or any limitation on, the full and unrestricted practice of Licensed Professional Counseling by a Licensing Board.

J. "Executive Committee" means a group of directors elected or appointed to act on behalf of, and within the powers granted to them by, the Commission.

K. "Home State" means the Member State that is the Licensee's primary State of residence.

L. "Impaired Practitioner" means an individual who has a condition(s) that may impair their ability to practice as a Licensed Professional Counselor without some type of intervention and may include, but are not limited to, alcohol and drug dependence, mental health impairment, and neurological or physical impairments.

M. "Investigative Information" means information, records, and documents received or generated by a Professional Counseling Licensing Board pursuant to an investigation.

N. "Jurisprudence Requirement" if required by a Member State, means the assessment of an individual's knowledge of the laws and Rules governing the practice of Professional Counseling in a State.

O. "Licensed Professional Counselor" means a counselor licensed by a Member State, regardless of the title used by that State, to independently assess, diagnose, and treat behavioral health conditions.

P. "Licensee" means an individual who currently holds an authorization from the State to practice as a Licensed Professional Counselor.

Q. "Licensing Board" means the agency of a State, or equivalent, that is responsible for the licensing and regulation of Licensed Professional Counselors.

R. "Member State" means a State that has enacted the Compact.

S. "Privilege to Practice" means a legal authorization, which is equivalent to a license, permitting the practice of Professional Counseling in a Remote State.

T. "Professional Counseling" means the assessment, diagnosis, and treatment of behavioral health conditions by a Licensed Professional Counselor.

U. "Remote State" means a Member State other than the Home State, where a Licensee is exercising or seeking to exercise the Privilege to Practice.

V. "Rule" means a regulation promulgated by the Commission that has the force of law.

W. "Single State License" means a Licensed Professional Counselor license issued by a Member State that authorizes practice only within the issuing State and does not include a Privilege to Practice in any other Member State.

X. "State" means any state, commonwealth, district, or territory of the United States of America that regulates the practice of Professional Counseling.

Y. "Telehealth" means the application of telecommunication technology to deliver Professional Counseling services remotely to assess, diagnose, and treat behavioral health conditions.

Z. "Unencumbered License" means a license that authorizes a Licensed Professional Counselor to engage in the full and unrestricted practice of Professional Counseling.

SECTION 3. STATE PARTICIPATION IN THE COMPACT

A. To Participate in the Compact, a State must currently:

1. License and regulate Licensed Professional Counselors;

2. Require Licensees to pass a nationally recognized exam approved by the Commission;

3. Require Licensees to have a 60 semester-hour (or 90 quarter-hour) master's degree in counseling or 60 semester-hours (or 90 quarter-hours) of graduate course work including the following topic areas:

a. Professional Counseling Orientation and Ethical Practice;

b. Social and Cultural Diversity;

c. Human Growth and Development;

d. Career Development;

e. Counseling and Helping Relationships;

f. Group Counseling and Group Work;

g. Diagnosis and Treatment; Assessment and Testing;

h. Research and Program Evaluation; and

i. Other areas as determined by the Commission.

4. Require Licensees to complete a supervised postgraduate professional experience as defined by the Commission;

5. Have a mechanism in place for receiving and investigating complaints about Licensees.

B. A Member State shall:

1. Participate fully in the Commission's Data System, including using the Commission's unique identifier as defined in Rules;

2. Notify the Commission, in compliance with the terms of the Compact and Rules, of any Adverse Action or the availability of Investigative Information regarding a Licensee;

3. Implement or utilize procedures for considering the criminal history records of applicants for an initial Privilege to Practice. These procedures shall include the submission of fingerprints or other biometric-based information by applicants for the purpose of obtaining an applicant's criminal history record information from the Federal Bureau of Investigation and the agency responsible for retaining that State's criminal records;

a. A member state must fully implement a criminal background check requirement, within a time frame established by rule, by receiving the results of the Federal Bureau of Investigation record search and shall use the results in making licensure decisions;

b. Communication between a Member State, the Commission and among Member States regarding the verification of eligibility for licensure through the Compact shall not include any information received from the Federal Bureau of Investigation relating to a federal

criminal records check performed by a Member State under Public Law 92-544.

4. Comply with the Rules of the Commission;

5. Require an applicant to obtain or retain a license in the Home State and meet the Home State's qualifications for licensure or renewal of licensure, as well as all other applicable State laws;

6. Grant the Privilege to Practice to a Licensee holding a valid Unencumbered License in another Member State in accordance with the terms of the Compact and Rules; and

7. Provide for the attendance of the State's commissioner to the Counseling Compact Commission meetings.

C. Member States may charge a fee for granting the Privilege to Practice.

D. Individuals not residing in a Member State shall continue to be able to apply for a Member State's Single State License as provided under the laws of each Member State. However, the Single State License granted to these individuals shall not be recognized as granting a Privilege to Practice Professional Counseling in any other Member State.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

F. A license issued to a Licensed Professional Counselor by a Home State to a resident in that State shall be recognized by each Member State as authorizing a Licensed Professional Counselor to practice Professional Counseling, under a Privilege to Practice, in each Member State.

SECTION 4. PRIVILEGE TO PRACTICE

A. To exercise the Privilege to Practice under the terms and provisions of the Compact, the Licensee shall:

1. Hold a license in the Home State;

2. Have a valid United States Social Security Number or National Practitioner Identifier;

3. Be eligible for a Privilege to Practice in any Member State in accordance with Section 4(D), (G) and (H);

4. Have not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years;

5. Notify the Commission that the Licensee is seeking the Privilege to Practice within a Remote State(s);

6. Pay any applicable fees, including any State fee, for the Privilege to Practice;

7. Meet any Continuing Competence/Education requirements established by the Home State;

8. Meet any Jurisprudence Requirements established by the Remote State(s) in which the Licensee is seeking a Privilege to Practice; and

9. Report to the Commission any Adverse Action, Encumbrance, or restriction on license taken by any non-Member State within 30 days from the date the action is taken.

B. The Privilege to Practice is valid until the expiration date of the Home State license. The Licensee must comply with the requirements of Section 4(A) to maintain the Privilege to Practice in the Remote State.

C. A Licensee providing Professional Counseling in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

D. A Licensee providing Professional Counseling services in a Remote State is subject to that State's regulatory authority. A Remote State may, in accordance with due process and that State's laws, remove a Licensee's Privilege to Practice in the Remote State for a specific period of time, impose fines, and/or take any other necessary actions to protect the health and safety of its citizens. The Licensee may be ineligible for a Privilege to Practice in any Member State until the specific time for removal has passed and all fines are paid.

E. If a Home State license is encumbered, the Licensee shall lose the Privilege to Practice in any Remote State until the following occur:

1. The Home State license is no longer encumbered; and

2. The Licensee has not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

F. Once an Encumbered License in the Home State is restored to good standing, the Licensee must meet the requirements of Section 4(A) to obtain a Privilege to Practice in any Remote State.

G. If a Licensee's Privilege to Practice in any Remote State is removed, the individual may lose the Privilege to Practice in all other Remote States until the following occur:

1. The specific period of time for which the Privilege to Practice was removed has ended;

2. All fines have been paid; and

3. The Licensee has not had any Encumbrance or restriction against any license or Privilege to Practice within the previous two (2) years.

H. Once the requirements of Section 4(G) have been met, the Licensee must meet the requirements in Section 4(A) to obtain a Privilege to Practice in a Remote St

SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

A. A Licensed Professional Counselor may hold a Home State license, which allows for a Privilege to Practice in other Member States, in only one Member State at a time.

B. If a Licensed Professional Counselor changes primary State of residence by moving between two Member States:

1. The Licensed Professional Counselor shall file an application for obtaining a new Home State license based on a Privilege to Practice, pay all applicable fees, and notify the current and new Home State in accordance with applicable Rules adopted by the Commission.

2. Upon receipt of an application for obtaining a new Home State license by virtue of a Privilege to Practice, the new Home State shall verify that the Licensed Professional Counselor meets the pertinent criteria outlined in Section 4 via the Data System, without need for primary source verification except for:

a. A Federal Bureau of Investigation fingerprint based criminal background check if not previously performed or updated pursuant to applicable rules adopted by the Commission in accordance with Public Law 92-544;

b. Other criminal background check as required by the new Home State; and

c. Completion of any requisite Jurisprudence Requirements of the new Home State.

3. The former Home State shall convert the former Home State license into a Privilege to Practice once the new Home State has activated the new Home State license in accordance with applicable Rules adopted by the Commission.

4. Notwithstanding any other provision of this Compact, if the Licensed Professional Counselor cannot meet the criteria in Section 4, the new Home State may apply its requirements for issuing a new Single State License.

5. The Licensed Professional Counselor shall pay all applicable fees to the new Home State in order to be issued a new Home State license.

C. If a Licensed Professional Counselor changes Primary State of Residence by moving from a Member State to a non-Member State, or from a non-Member State to a Member State, the State criteria shall apply for issuance of a Single State License in the new State.

D. Nothing in this Compact shall interfere with a Licensee's ability to hold a Single State License in multiple States, however for the purposes of this Compact, a Licensee shall have only one Home State license.

E. Nothing in this Compact shall affect the requirements established by a Member State for the issuance of a Single State License.

SECTION 6. ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

Active Duty Military personnel, or their spouse, shall designate a Home State where the individual has a current license in good standing. The individual may retain the Home State designation during the period the service member is on active duty. Subsequent to designating a Home State, the individual shall only change their Home State through application for licensure in the new State, or through the process outlined in Section 5.

SECTION 7. COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

A. Member States shall recognize the right of a Licensed Professional Counselor, licensed by a Home State in accordance with Section 3 and under Rules promulgated by the Commission, to practice Professional Counseling in any Member State via Telehealth under a Privilege to Practice as provided in the Compact and Rules promulgated by the Commission.

B. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations of the Remote State.

SECTION 8. ADVERSE ACTIONS

A. In addition to the other powers conferred by State law, a Remote State shall have the authority, in accordance with existing State due process law, to:

1. Take Adverse Action against a Licensed Professional Counselor's Privilege to Practice within that Member State, and

2. Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a Licensing Board in a Member State for the attendance and testimony of witnesses or the production of evidence from another Member State shall be enforced in the latter State by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage, and other fees required by the service statutes of the State in which the witnesses or evidence are located.

3. Only the Home State shall have the power to take Adverse Action against a Licensed Professional Counselor's license issued by the Home State.

B. For purposes of taking Adverse Action, the Home State shall give the same priority and effect to reported conduct received from a Member State as it would if the conduct had occurred within the Home State. In so doing, the Home State shall apply its own State laws to determine appropriate action.

C. The Home State shall complete any pending investigations of a Licensed Professional Counselor who changes primary State of residence during the course of the investigations. The Home State shall also have the authority to take appropriate action(s) and shall promptly report the conclusions of the investigations to the administrator of the Data System. The administrator of the coordinated licensure information system shall promptly notify the new Home State of any Adverse Actions.

D. A Member State, if otherwise permitted by State law, may recover from the affected Licensed Professional Counselor the costs of investigations and dispositions of cases resulting from any Adverse Action taken against that Licensed Professional Counselor.

E. A Member State may take Adverse Action based on the factual findings of the Remote State, provided that the Member State follows its own procedures for taking the Adverse Action.

F. Joint Investigations:

1. In addition to the authority granted to a Member State by its respective Professional Counseling practice act or other applicable State law, any Member State may participate with other Member States in joint investigations of Licensees.

2. Member States shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under the Compact.

G. If Adverse Action is taken by the Home State against the license of a Licensed Professional Counselor, the Licensed Professional Counselor's Privilege to Practice in all other Member States shall be deactivated until all Encumbrances have been removed from the State license. All Home State disciplinary orders that impose Adverse Action against the license of a Licensed Professional Counselor shall include a Statement that the Licensed Professional Counselor's Privilege to Practice is deactivated in all Member States during the pendency of the order.

H. If a Member State takes Adverse Action, it shall promptly notify the administrator of the Data System. The administrator of the Data System shall promptly notify the Home State of any Adverse Actions by Remote States.

I. Nothing in this Compact shall override a Member State's decision that participation in an Alternative Program may be used in lieu of Adverse Action.

SECTION 9. ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

A. The Compact Member States hereby create and establish a joint public agency known as the Counseling Compact Commission:

1. The Commission is an instrumentality of the Compact States.

2. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Commission is located. The Commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

3. Nothing in this Compact shall be construed to be a waiver of sovereign immunity.

B. Membership, Voting, and Meetings

1. Each Member State shall have and be limited to one (1) delegate selected by that Member State's Licensing Board.

2. The delegate shall be either:

a. A current member of the Licensing Board at the time of appointment, who is a Licensed Professional Counselor or public member; or

b. An administrator of the Licensing Board.

3. Any delegate may be removed or suspended from office as provided by the law of the State from which the delegate is appointed.

4. The Member State Licensing Board shall fill any vacancy occurring on the Commission within 60 days.

5. Each delegate shall be entitled to one (1) vote with regard to the promulgation of Rules and creation of bylaws and shall otherwise have an opportunity to participate in the business and affairs of the Commission.

6. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telephone or other means of communication.

7. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

8. The Commission shall by Rule establish a term of office for delegates and may by Rule establish term limits.

C. The Commission shall have the following powers and duties:

1. Establish the fiscal year of the Commission;

2. Establish bylaws;

3. Maintain its financial records in accordance with the bylaws;

4. Meet and take such actions as are consistent with the provisions of this Compact and the bylaws;

5. Promulgate Rules which shall be binding to the extent and in the manner provided for in the Compact;

6. Bring and prosecute legal proceedings or actions in the name of the Commission, provided that the standing of any State Licensing Board to sue or be sued under applicable law shall not be affected;

7. Purchase and maintain insurance and bonds;

8. Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a Member State;

9. Hire employees, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of the Compact, and establish the Commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

10. Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided that at all times the Commission shall avoid any appearance of impropriety and/or conflict of interest;

11. Lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided that at all times the Commission shall avoid any appearance of impropriety;

12. Sell convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

13. Establish a budget and make expenditures;

14. Borrow money;

15. Appoint committees, including standing committees composed of members, State regulators, State legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this Compact and the bylaws;

16. Provide and receive information from, and cooperate with, law enforcement agencies;

17. Establish and elect an Executive Committee; and

18. Perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the State regulation of Professional Counseling licensure and practice.

D. The Executive Committee

1. The Executive Committee shall have the power to act on behalf of the Commission according to the terms of this Compact.

2. The Executive Committee shall be composed of up to eleven (11) members:

a. Seven voting members who are elected by the Commission from the current membership of the Commission; and

b. Up to four (4) ex-officio, nonvoting members from four (4) recognized national professional counselor organizations.

c. The ex-officio members will be selected by their respective organizations.

3. The Commission may remove any member of the Executive Committee as provided in bylaws.

4. The Executive Committee shall meet at least annually.

5. The Executive Committee shall have the following duties and responsibilities:

a. Recommend to the entire Commission changes to the Rules or bylaws, changes to this Compact legislation, fees paid by Compact Member States such as annual dues, and any Commission Compact fee charged to Licensees for the Privilege to Practice;

b. Ensure Compact administration services are appropriately provided, contractual or otherwise;

c. Prepare and recommend the budget;

d. Maintain financial records on behalf of the Commission;

e. Monitor Compact compliance of Member States and provide compliance reports to the Commission;

f. Establish additional committees as necessary; and

g. Other duties as provided in Rules or bylaws.

E. Meetings of the Commission

1. All meetings shall be open to the public, and public notice of meetings shall be given in the same manner as required under the Rulemaking provisions in Section 11.

2. The Commission or the Executive Committee or other committees of the Commission may convene in a closed, non-public meeting if the Commission or Executive Committee or other committees of the Commission must discuss:

a. Non-compliance of a Member State with its obligations under the Compact;

b. The employment, compensation, discipline or other

matters, practices or procedures related to specific employees or other matters related to the Commission's internal personnel practices and procedures;

c. Current, threatened, or reasonably anticipated litigation;

d. Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

e. Accusing any person of a crime or formally censuring any person;

f. Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

g. Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

h. Disclosure of investigative records compiled for law enforcement purposes;

i. Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the Commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to the Compact; or

j. Matters specifically exempted from disclosure by federal or Member State statute.

3. If a meeting, or portion of a meeting, is closed pursuant to this provision, the Commission's legal counsel or designee shall certify that the meeting may be closed and shall reference each relevant exempting provision.

4. The Commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefore, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the Commission or order of a court of competent jurisdiction.

F. Financing of the Commission

1. The Commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

2. The Commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

3. The Commission may levy on and collect an annual assessment from each Member State or impose fees on other parties to cover the cost of the operations and activities of the Commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved each year for which revenue is not provided by other sources. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Commission, which shall promulgate a Rule binding upon

all Member States.

4. The Commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Commission pledge the credit of any of the Member States, except by and with the authority of the Member State.

5. The Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Commission shall be audited yearly by a certified or licensed public accountant, and the report of the audit shall be included in and become part of the annual report of the Commission.

G. Qualified Immunity, Defense, and Indemnification

1. The members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person.

2. The Commission shall defend any member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities; provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful or wanton misconduct.

3. The Commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful or wanton misconduct of that person.

SECTION 10. DATA SYSTEM

A. The Commission shall provide for the development, maintenance, operation, and utilization of a coordinated database and reporting system containing licensure, Adverse Action, and Investigative Information on all

licensed individuals in Member States.

B. Notwithstanding any other provision of State law to the contrary, a Member State shall submit a uniform data set to the Data System on all individuals to whom this Compact is applicable as required by the Rules of the Commission, including:

1. Identifying information;

2. Licensure data;

3. Adverse Actions against a license or Privilege to Practice;

4. Non-confidential information related to Alternative Program participation;

5. Any denial of application for licensure, and the reason(s) for such denial;

6. Current Significant Investigative Information; and

7. Other information that may facilitate the administration of this Compact, as determined by the Rules of the Commission.

C. Investigative Information pertaining to a Licensee in any Member State will only be available to other Member States.

D. The Commission shall promptly notify all Member States of any Adverse Action taken against a Licensee or an individual applying for a license. Adverse Action information pertaining to a Licensee in any Member State will be available to any other Member State.

E. Member States contributing information to the Data System may designate information that may not be shared with the public without the express permission of the contributing State.

F. Any information submitted to the Data System that is subsequently required to be expunged by the laws of the Member State contributing the information shall be removed from the Data System.

SECTION 11. RULEMAKING

A. The Commission shall promulgate reasonable Rules in order to effectively and efficiently achieve the purpose of the Compact. Notwithstanding the foregoing, in the event the Commission exercises its Rulemaking authority in a manner that is beyond the scope of the purposes of the Compact, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force or effect.

B. The Commission shall exercise its Rulemaking powers pursuant to the criteria set forth in this Section and the Rules adopted thereunder. Rules and amendments shall become binding as of the date specified in each Rule or amendment.

C. If a majority of the legislatures of the Member States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the Compact within four (4) years of the date of adoption of the Rule, then such Rule shall have no further force and effect in any Member State.

D. Rules or amendments to the Rules shall be adopted at a regular or special meeting of the Commission.

E. Prior to promulgation and adoption of a final Rule or Rules by the Commission, and at least thirty (30) days in advance of the meeting at which the Rule will be considered and voted upon, the Commission shall

file a Notice of Proposed Rulemaking:

1. On the website of the Commission or other publicly accessible platform; and

2. On the website of each Member State Professional Counseling Licensing Board or other publicly accessible platform or the publication in which each State would otherwise publish proposed Rules.

F. The Notice of Proposed Rulemaking shall include:

1. The proposed time, date, and location of the meeting in which the Rule will be considered and voted upon;

2. The text of the proposed Rule or amendment and the reason for the proposed Rule;

3. A request for comments on the proposed Rule from any interested person; and

4. The manner in which interested persons may submit notice to the Commission of their intention to attend the public hearing and any written comments.

G. Prior to adoption of a proposed Rule, the Commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

H. The Commission shall grant an opportunity for a public hearing before it adopts a Rule or amendment if a hearing is requested by:

1. At least twenty-five (25) persons;

2. A State or federal governmental subdivision or agency; or

3. An association having at least twenty-five (25) members.

I. If a hearing is held on the proposed Rule or amendment, the Commission shall publish the place, time, and date of the scheduled public hearing. If the hearing is held via electronic means, the Commission shall publish the mechanism for access to the electronic hearing.

1. All persons wishing to be heard at the hearing shall notify the executive director of the Commission or other designated member in writing of their desire to appear and testify at the hearing not less than five (5) business days before the scheduled date of the hearing.

2. Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

3. All hearings will be recorded. A copy of the recording will be made available on request.

4. Nothing in this section shall be construed as requiring a separate hearing on each Rule. Rules may be grouped for the convenience of the Commission at hearings required by this section.

J. Following the scheduled hearing date, or by the close of business on the scheduled hearing date if the hearing was not held, the Commission shall consider all written and oral comments received.

K. If no written notice of intent to attend the public hearing by interested parties is received, the Commission may proceed with promulgation of the proposed Rule without a public hearing.

L. The Commission shall, by majority vote of all members, take final action on the proposed Rule and shall determine the effective date of the Rule, if any, based on the Rulemaking record and the full text of the Rule.

M. Upon determination that an emergency exists, the Commission may consider and adopt an emergency Rule without prior notice, opportunity for comment, or hearing, provided that the usual Rulemaking procedures provided in the Compact and in this section shall be retroactively applied to the Rule as soon as reasonably possible, in no event later than ninety (90) days after the effective date of the Rule. For the purposes of this provision, an emergency Rule is one that must be adopted immediately in order to:

1. Meet an imminent threat to public health, safety, or welfare;

2. Prevent a loss of Commission or Member State funds;

3. Meet a deadline for the promulgation of an administrative Rule that is established by federal law or Rule; or

4. Protect public health and safety.

N. The Commission or an authorized committee of the Commission may direct revisions to a previously adopted Rule or amendment for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the Commission. The revision shall be subject to challenge by any person for a period of thirty (30) days after posting. The revision may be challenged only on grounds that the revision results in a material change to a Rule. A challenge shall be made in writing and delivered to the chair of the Commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the Commission.

SECTION 12. OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

A. Oversight

1. The executive, legislative, and judicial branches of State government in each Member State shall enforce this Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. The provisions of this Compact and the Rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the Compact and the Rules in any judicial or administrative proceeding in a Member State pertaining to the subject matter of this Compact which may affect the powers, responsibilities, or actions of the Commission.

3. The Commission shall be entitled to receive service of process in any such proceeding and shall have standing to intervene in such a proceeding for all purposes. Failure to provide service of process to the Commission shall render a judgment or order void as to the Commission, this Compact, or promulgated Rules.

B. Default, Technical Assistance, and Termination

1. If the Commission determines that a Member State has defaulted in the performance of its obligations or responsibilities under this Compact or the promulgated Rules, the Commission shall:

a. Provide written notice to the defaulting State and other Member States of the nature of the default, the proposed means of curing the default and/or any other action to be taken by the Commission; and

b. Provide remedial training and specific technical assistance regarding the default.

C. If a State in default fails to cure the default, the defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Member States, and all rights, privileges and benefits conferred by this Compact may be terminated on the effective date of termination. A cure of the default does not relieve the offending State of obligations or liabilities incurred during the period of default.

D. Termination of membership in the Compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the Commission to the governor, the majority and minority leaders of the defaulting State's legislature, and each of the Member States.

E. A State that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

F. The Commission shall not bear any costs related to a State that is found to be in default or that has been terminated from the Compact, unless agreed upon in writing between the Commission and the defaulting State.

G. The defaulting State may appeal the action of the Commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the Commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

H. Dispute Resolution

1. Upon request by a Member State, the Commission shall attempt to resolve disputes related to the Compact that arise among Member States and between member and non-Member States.

2. The Commission shall promulgate a Rule providing for both mediation and binding dispute resolution for disputes as appropriate.

I. Enforcement

1. The Commission, in the reasonable exercise of its discretion, shall enforce the provisions and Rules of this Compact.

2. By majority vote, the Commission may initiate legal action in the United States District Court for the District of Columbia or the federal district where the Commission has its principal offices against a Member State in default to enforce compliance with the provisions of the Compact and its promulgated Rules and bylaws. The relief sought may include both injunctive relief and damages.

In the event judicial enforcement is necessary, the prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

3. The remedies herein shall not be the exclusive remedies of the Commission. The Commission may pursue any other remedies available under federal or State law.

SECTION 13. DATE OF IMPLEMENTATION OF THE COUNSELING COMPACT COMMISSION AND ASSOCIATED RULES, WITHDRAWAL, AND AMENDMENT

A. The Compact shall come into effect on the date on which the Compact statute is enacted into law in the tenth Member State. The provisions, which become effective at that time, shall be limited to the powers granted to the Commission relating to assembly and the promulgation of Rules. Thereafter, the Commission shall meet and exercise Rulemaking powers necessary to the implementation and administration of the Compact.

B. Any State that joins the Compact subsequent to the Commission's initial adoption of the Rules shall be subject to the Rules as they exist on the date on which the Compact becomes law in that State. Any Rule that has been previously adopted by the Commission shall have the full force and effect of law on the day the Compact becomes law in that State.

C. Any Member State may withdraw from this Compact by enacting a statute repealing the same.

1. A Member State's withdrawal shall not take effect until six (6) months after enactment of the repealing statute.

2. Withdrawal shall not affect the continuing requirement of the withdrawing State's Professional Counseling Licensing Board to comply with the investigative and Adverse Action reporting requirements of this act prior to the effective date of withdrawal.

D. Nothing contained in this Compact shall be construed to invalidate or prevent any Professional Counseling licensure agreement or other cooperative arrangement between a Member State and a non-Member State that does not conflict with the provisions of this Compact.

E. This Compact may be amended by the Member States. No amendment to this Compact shall become effective and binding upon any Member State until it is enacted into the laws of all Member States.

SECTION 14. CONSTRUCTION AND SEVERABILITY

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any Member State or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any Member State, the Compact shall remain in full force and effect as to the remaining Member States and in full force and effect as to the Member State affected as to all severable matters.

SECTION 15. BINDING EFFECT OF COMPACT AND OTHER LAWS

A. A Licensee providing Professional Counseling services in a Remote State under the Privilege to Practice shall adhere to the laws and regulations,

including scope of practice, of the Remote State.

B. Nothing herein prevents the enforcement of any other law of a Member State that is not inconsistent with the Compact.

C. Any laws in a Member State in conflict with the Compact are superseded to the extent of the conflict.

D. Any lawful actions of the Commission, including all Rules and bylaws properly promulgated by the Commission, are binding upon the Member States.

E. All permissible agreements between the Commission and the Member States are binding in accordance with their terms.

F. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any Member State, the provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that Member State.

Signed February 12, 2024

TRADE REGULATION

Chapter 165

(House Bill 1116)

An Act to make fraudulent solicitation of charitable contributions a deceptive act or practice.

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

Section 1. That § 37-24-6 be AMENDED:

37-24-6. It is a deceptive act or practice for any person to:

(1) Knowingly act, use, or employ any deceptive act or practice, fraud, false pretense, false promises, or misrepresentation or to conceal, suppress, or omit any material fact in connection with the sale or advertisement of any merchandise or the solicitation of contributions for charitable purposes, regardless of whether any person has in fact been misled, deceived, or damaged thereby;

(2) Advertise price reductions without satisfying one of the following:

(a) Including in the advertisement the specific basis for the claim of a price reduction; or

(b) Offering the merchandise for sale at the higher price from which the reduction is taken for at least seven consecutive business days during the sixty-day period prior to the advertisement.

Any person advertising consumer property or services in this state, which advertisements contain representations or statements as to any type of savings claim, including reduced

price claims and price comparison value claims, shall maintain reasonable records for a period of two years from the date of sale and advertisement, which records shall disclose the factual basis for such representations or statements and from which the validity of any such claim be established. However, these reasonable record provisions do not apply to the sale of any merchandise that is of a class of merchandise that is routinely advertised on at least a weekly basis in newspapers, shopping tabloids, or similar publications and that has a sales price before price reduction that is less than fifteen dollars per item;

(3) Represent a sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first advertisement remain in business under the same, or substantially the same, ownership or trade name, or continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days;

(4) Give or offer a rebate, discount, or anything of value to a person as an inducement for selling consumer property or services in consideration of giving the names of prospective purchasers or otherwise aiding in making a sale to another person, if the earning of the rebate, discount, or other thing of value is contingent upon the occurrence of an event subsequent to the time the person agrees to the sale;

(5) Engage in any scheme or plan for disposal or distribution of merchandise whereby a participant pays a valuable consideration for the chance to receive compensation primarily for introducing one or more additional persons into participation in the planner's scheme or for the chance to receive compensation when the person introduced by the participant introduces a new participant;

(6) Send, deliver, provide, mail, or cause to be sent, delivered, provided, or mailed any bill or invoice for unordered property or unordered service provided;

(7) Advertise a rate, price, or fee for a hotel, motel, campsite, or other lodging accommodation which is not in fact available to the public under the terms advertised. It is not a violation of this subdivision to establish contract rates which are different than public rates;

(8) Charge a rate, price, or fee for a hotel, motel, campsite, or other lodging accommodation which is different than the rate, price, or fee charged on the first night of the guest's stay unless, at the initial registration of the guest, a written notification of each price, rate, or fee to be charged during the guest's reserved continuous stay is delivered to the guest and an acknowledgment of receipt of the notice is signed by the guest and kept by the innkeeper for the same period of time as is required by § 34-18-21;

(9) Knowingly fail to mail or to deliver by electronic means to a future guest a written confirmation of the date and rates of reservations made for any accommodation at a hotel, motel, campsite, or other lodging accommodation when a written request for confirmation is received from the future guest;

(10) Require money in advance of arrival or a handling fee in the event of cancellation of any hotel, motel, campsite, or other lodging accommodation unless the innkeeper has a written policy or a separate contract with the guest stating so that is mailed or delivered by electronic means to the guest at or near the making of the reservation;

(11) Knowingly advertise or cause to be listed through the internet or in a telephone directory a business address that misrepresents where the business is actually located or that falsely states that the business is located in the same area covered by the telephone directory. This subdivision does not apply to a telephone service provider, an internet service provider, or a publisher or distributor of a telephone directory, unless the conduct proscribed in this subdivision is on behalf of the provider, publisher, or distributor;

(12) Sell, market, promote, advertise, or otherwise distribute any card or other purchasing mechanism or device that is not insurance that purports to offer discounts or access to discounts from pharmacies for prescription drug purchases if:

(a) The card or other purchasing mechanism or device does not expressly state in bold and prominent type, prevalently placed, that discounts are not insurance;

(b) The discounts are not specifically authorized by a separate contract with each pharmacy listed in conjunction with the card or other purchasing mechanism or device; or

(c) The discount or access to discounts offered, or the range of discounts or access to the range of discounts, is misleading, deceptive, or fraudulent, regardless of the literal wording.

The provisions of this subdivision do not apply to a customer discount or membership card issued by a store or buying club for use in that store or buying club, or a patient access program voluntarily sponsored by a pharmaceutical manufacturer, or a consortium of pharmaceutical manufacturers, that provide free or discounted prescription drug products directly to low income or uninsured individuals either through a discount card or direct shipment;

(13) Send or cause to be sent an unsolicited commercial electronic mail message that does not include in the subject line of such message "ADV:" as the first four characters. If the message contains information that consists of explicit sexual material that may only be viewed, purchased, rented, leased, or held in possession by an individual eighteen years of age and older, the subject line of each message shall include "ADV:ADLT" as the first eight characters. An unsolicited commercial electronic mail message does not include a message sent to a person with whom the initiator has an existing personal or business relationship or a message sent at the request or express consent of the recipient;

(14) Violate the provisions of § 22-25-52;

(15) Knowingly fail to disclose the amount of any mandatory fee when reservations are made by a future guest at a hotel, motel, campsite, or other lodging accommodations. A mandatory fee under this subdivision includes any resort fee or parking fee charged by the lodging accommodations whether or not the guest utilizes the amenities or the parking facility for which the fee is assessed; or

(16) Cause misleading information to be transmitted to users of caller identification technologies or otherwise block or misrepresent the origin of a telephone solicitation. No provider of telephone caller identification services, telecommunications, broadband, or voice over internet protocol service may be held liable for violations of this subdivision committed by other individuals or entities. It is not a violation of this subdivision:

(a) For a telephone solicitor to utilize the name and number of the entity the solicitation is being made on behalf of rather than the name and number of the telephone solicitor;

(b) If an authorized activity of a law enforcement agency; or

(c) If a court order specifically authorizes the use of caller identification manipulation.

Each act in violation of this section under one thousand dollars is a Class 1 misdemeanor. Each act in violation of this statute over one thousand dollars but under one hundred thousand dollars is a Class 6 felony. Each act in violation of this section over one hundred thousand dollars is a Class 5 felony.

Signed February 28, 2024

Chapter 166

(House Bill 1033)

An Act to address the administration of State Conservation Commission functions by the Department of Agriculture and Natural Resources.

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

Section 1. That § 1-32-6 be AMENDED:

1-32-6. Unless otherwise provided by chapters 1-32 to 1-47, inclusive, ~~or § 38-7-2.2,~~ division directors ~~shall~~ must be appointed by the head of the department or bureau of which the division is a part, and shall serve at the pleasure of the department or bureau head. ~~However both the~~ The appointment and removal of division directors ~~shall be~~ is subject to approval by the Governor. Departments and bureaus shall submit, for approval to the commissioner of personnel, minimum qualifications for the division director positions within their departments or bureaus.

Section 2. That § 1-41-6.1 be AMENDED:

1-41-6.1. The State Conservation Commission, created by § 38-7-3, shall continue within the ~~Division of Resource Conservation and Forestry of the~~ Department of Agriculture and Natural Resources ~~and the Division of Resource Conservation and Forestry shall, under the direction and control of the director of resource conservation and forestry, perform all the administrative functions, except special budgetary functions (as defined in § 1-32-1) of the State Conservation Commission~~.

Section 3. That § 38-7-1 be AMENDED:

38-7-1. It is ~~hereby~~ declared to be the policy of this state, and within the scope of this chapter and chapter 38-8, to ~~provide~~:

(1) Provide for ~~the~~ conservation of the ~~soil and soil~~ natural resources of this state~~, and for the~~;

(2) Provide for the control and prevention of soil erosion~~, and for the~~;

(3) Provide for the prevention of floodwater and sediment damages~~,~~; and

(4) Provide for furthering the conservation, development, utilization, and disposal of water~~, and thereby~~ to ~~preserve~~:

(a) Preserve natural resources~~, control~~;

(b) Control floods~~, prevent~~;

(c) Prevent the impairment of dams and reservoirs~~, assist~~;

(d) Assist in maintaining the navigability of rivers and harbors~~, preserve~~;

(e) Preserve wildlife~~, protect~~ habitat;

(f) Promote soil health principles and practices;

(g) Protect the tax base~~, protect~~;

(h) Protect public lands~~,~~; and ~~protect~~

(i) Protect and promote the health, safety, and general welfare of the people of this state.

Section 4. That § 38-7-2 be AMENDED:

38-7-2. Terms used in this chapter or chapter 38-8 mean:

(1) "Agency of this state," the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(2) "Commission," the State Conservation Commission;

(3) "District" or "conservation district," a governmental subdivision of this state, and a public body, corporate and politic, organized in accordance with ~~the provisions of~~ chapter 38-8, for the purpose, with the powers, and subject to the restrictions set forth in chapter 38-8;

(4) "Division," the Division of Resource Conservation and Forestry;

(5) "Due notice," a notice published at least twice, with an interval of at least seven days between the publication dates, in a legal newspaper within the district or by posting copies of the notice in three of the most public places within the district for a period of at least ten days immediately preceding the date specified in the notice. At any hearing held pursuant to the notice, at the time and place designated in the notice, the adjournment may be made from time to time without the necessity of renewing the notice for adjourned dates;

(6) "Government" or "governmental," the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them; and

(7) ~~"Land occupier" or "occupier of land," any person, firm, or corporation who holds title to, or is in possession of any agricultural, grazing, or forest lands lying within a conservation district, whether as owner, lessee, renter, tenant, or otherwise;~~

~~(8) "Nominating petition," a petition filed under the provisions of chapter 38-8 to nominate candidates for the office of supervisor of a conservation district;~~

~~(9) "Petition," a petition filed under the provisions of chapter 38-8 for the creation of a conservation district;~~

~~(10)~~ "Supervisor," one of the members of the governing body of a district, elected or appointed in accordance with~~ the provisions of~~ chapter 38-8~~;~~

~~(11)~~ ~~"United States" or "agencies of the United States," the United States of America, the Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America~~.

Section 5. That § 38-7-2.3 be AMENDED:

38-7-2.3. Subject to § 38-7-3.1,~~ all of~~ the Department of Agriculture and Natural Resources shall perform the functions of the~~ State Conservation Commission~~ commission, as provided for in this chapter and chapter 38-8, relative to conservation districts~~, shall be performed by the Division of Resource Conservation and Forestry created by this chapter, under the direction and control of the director of the Division of Resource Conservation and Forestry~~.

Section 6. That § 38-7-3 be AMENDED:

38-7-3. There is hereby established~~, to serve as an agency of the state and to perform the functions conferred upon it in this chapter and chapter 38-8,~~ the State Conservation Commission.

Section 7. That § 38-7-3.1 be AMENDED:

38-7-3.1. The~~ State Conservation Commission shall be~~ commission is administered~~ under the direction and supervision of the Division of Resource Conservation and Forestry of~~ by the Department of Agriculture and Natural Resources~~ and the director thereof, but~~. The commission shall retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative, and special budgetary functions~~ (~~, as defined in § 1-32-1~~)~~, otherwise vested in it, and shall exercise those functions independently of the~~ director of the Division of Resource Conservation and Forestry~~ department.

Section 8. That § 38-7-17 be AMENDED:

38-7-17. ~~In addition to the duties and powers conferred upon the Division of Resource Conservation and Forestry in chapter 38-8, it shall have the duty and power to~~The Department of Agriculture and Natural Resources may coordinate the programs of ~~the several~~ conservation districts~~ organized under chapter 38-8~~, so far as this may be done by advice and consultation.

Section 9. That § 38-7-20 be AMENDED:

38-7-20. ~~In addition to the duties and powers conferred upon the Division of Resource Conservation and Forestry in chapter 38-8, it shall have the duty and power to~~The Department of Agriculture and Natural Resources may represent the ~~state~~ conservation districts and~~ to~~ develop and implement~~ state~~ policy for~~ land~~ natural resources conservation and development. ~~Also to~~The department may cooperate at all levels of government, with all~~ other~~ agencies,~~ both~~ public and private, in the conservation and development of all renewable natural resources.

Section 10. That § 38-7-29 be AMENDED:

38-7-29. The South Dakota~~ soil~~ natural resources conservation award program is hereby established. Under the program, each conservation district may annually select ~~not~~ no more than five residents of the~~ conservation~~ district~~ each year as recipients of the Soil Conservation Award~~ to receive a natural resources conservation award.

To be eligible for an award, a person ~~shall~~ must be ~~a South Dakota resident who is~~ directly and actively engaged in agricultural production in ~~South Dakota~~ this state.

In selecting award recipients, the ~~conservation~~ district may consult with the ~~South Dakota State Conservation Commission~~ commission and other relevant entities.

Awards ~~shall~~ must be based upon the recipient's contribution ~~toward~~ to the preservation and conservation of ~~soil and other~~ natural resources in ~~South Dakota~~ this state, in conjunction with the recipient's agricultural operations.

Section 11. That § 38-7-30 be AMENDED:

38-7-30. Each recipient shall receive a sign displaying the words "South Dakota ~~Soil~~ Natural Resources Conservation Award" and "Award Winning Soil Conservation Farm," and the year of the award. The ~~South Dakota Conservation Commission~~ commission shall promulgate rules, pursuant to chapter 1-26, governing the ~~soil~~ natural resources conservation award program. The rules ~~shall~~ must include ~~the following~~:

(1) Criteria for selecting award recipients in accordance with the requirements of § 38-7-29 and this section, which ~~shall~~ must include efforts to maintain grass waterways and ~~eliminating~~ eliminate the cultivation of waterways; terracing; crop rotation; leaving crop residue after harvesting; and ~~no till~~ utilizing no-till farming;

(2) Procedures for nominating and selecting award recipients;

(3) Procedures to publicize and raise awareness of the need for ~~soil~~ natural resources conservation practices, as outlined in subdivision (1) of this section; and

(4) Other procedures necessary for the administration of the award program.

Section 12. That § 38-7-2.2 be REPEALED:

~~The director of the Division of Resource Conservation and Forestry shall be nominated by the State Conservation Commission and appointed by the secretary of the Department of Agriculture and Natural Resources with the approval of the Governor. The director of the Division of Resource Conservation and Forestry shall be removable in accordance with the provisions of § 1-32-6.~~

Signed February 5, 2024

AGRICULTURE AND HORTICULTURE

Chapter 167

(House Bill 1031)

An Act to update the development and implementation of conservation district standards.

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

Section 1. That § 38-8A-3 be AMENDED:

38-8A-3. The ~~State Conservation Commission~~ commission shall develop comprehensive state erosion and sediment control guidelines ~~before July 1, 1977~~. These guidelines are to be developed with full opportunity for citizen participation in accordance with chapter 1-26.

Section 2. That § 38-8A-6 be AMENDED:

38-8A-6. The ~~conservation district~~ supervisors of each district in the state, in cooperation and consultation with counties, municipalities, and other affected units of local government shall, within twelve months after the adoption of the state guidelines, develop proposed district conservation standards. These standards may designate, as ~~"fragile land"~~ fragile land, any area of the district ~~which is~~ that:

(1) Is Class IVe, VI, VII, or VIII, according to the United States Department of Agriculture classification system, as described in ~~"Land Capability Classification", Agricultural Handbook 210, Soil Conservation Service, United States Department of Agriculture, issued September, 1961, and in effect on January 1, 1984;~~ Title 430, National Soil Survey Handbook, Part 622 Interpretive Groups, Land Capability Classification, (June 2020); and ~~is~~

(2) Is so erosive as to cause a public hazard when converted to cropland use.

Section 3. That § 38-8A-23 be AMENDED:

38-8A-23. If the board of supervisors of any ~~conservation~~ district is advised, in ~~writing~~ a written or electronic form, that soil is blowing from any land, or if any land in the county, roads, or public property, is being damaged, as the result of blowing soil, the board ~~shall~~ must inspect the land. If the board finds soil is blowing from the land, in excess of local conservation district standards, to the point that it is injurious to other land, roads, or public property, the board ~~shall~~ must determine what can be done to prevent or lessen the blowing of soil from the land. If the board finds, after consulting with the ~~State Conservation Commission~~ commission, if appropriate, that the blowing can be prevented or lessened by treatment of the soil, the board ~~shall~~ must issue an order to the owner of record, and to the operator, if known to the board, stating the treatment required, and the date the treatment is to be started and completed.

Signed February 5, 2024

Chapter 168

(Senate Bill 117)

An Act to revise provisions regarding industrial hemp.

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

Section 1. That § 38-35-1 be AMENDED:

38-35-1. Terms used in this chapter mean:

(1) "Applicant," a person, including the state or any agency or institution thereof, any municipality, political subdivision, public or private

corporation, individual, partnership, limited liability company, association, or trust; and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation, or limited liability company, applying for an industrial hemp grower license, processor license, or both;

(2) "Department," the Department of Agriculture and Natural Resources;

(3) "Greenhouse," any indoor structure or enclosed building capable of continuous cultivation throughout the year, no less than two thousand eight hundred and eighty square feet, not part of a residential dwelling. Greenhouses may contain multiple lots that are separated and identified;

(4) "Hemp" or "industrial hemp," the plant Cannabis sativa L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent on a dry weight basis;

(5) "Key participant," a sole proprietor, a partner in a partnership, a principal executive officer for a government entity, or a person with executive managerial control in a corporation or limited liability company;

(6) "Industrial hemp product," a finished manufactured product, or consumer product made from industrial hemp with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent, derived from or made by processing industrial hemp;

(7) "Industrial hemp stalk bale," a bale that contains two main types of fiber, bast or long fiber found in the bark (skin) and hurd (shive), or short fiber located in the core of the stem, with a total delta-9 tetrahydrocannabinol concentration of not more than three-tenths of one percent;

~~(7)~~(8) "Lot," a contiguous area in a field or greenhouse containing the same variety or strain of hemp throughout the area. In addition, "lot" means the terms, "farm," "tract," "field," and "subfield" used by the United States Department of Agriculture Farm Service Agency to mean "lot";

~~(8)~~(9) "Measurement of uncertainty," the parameter associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the particular quantity subject to measurement;

~~(9)~~(10) "Process" or "processing," to render raw industrial hemp plants or plant parts from their natural or original state to an initial processed form. Typical processing includes decortication, devitalization, crushing, or extraction;

~~(10)~~(11) "Processor," a person that converts raw hemp into an initial processed form;

~~(11)~~(12) "Produce" or "producing," to grow, germinate, dry, sort, grade, bale, grind, mill, pelletize, and harvest hemp plants in the field or in a greenhouse;

~~(12)~~(13) "Product in process," the product being processed by a state licensed hemp processor or the transfer of that product at no higher than one percent total delta-9 tetrahydrocannabinol between one or more licensed hemp processors during the process of processing state or federally approved, lab-tested biomass from a licensed grower into a finished industrial hemp product;

~~(13)~~(14) "Remediation," the process of rendering non-compliant cannabis compliant using methods accepted by the USDA;

~~(14)~~(15) "Secretary," the secretary of the Department of Agriculture and Natural Resources;

~~(15)~~(16) "Total delta-9 THC or total delta-9 tetrahydrocannabinol," the value determined after the process of decarboxylation, or the application of a conversion factor if the testing methodology does not include decarboxylation, that expresses the potential total delta-9 tetrahydrocannabinol content derived from the sum of the THC and THCA content and reported on a dry weight basis; and

~~(16)~~(17) "Transporter," any person transporting, hauling, or delivering immature or mature hemp or product in process, but not industrial hemp product or sterilized seeds that are incapable of beginning germination.

Section 2. That § 38-35-3 be AMENDED:

38-35-3. After the department receives approval by the United States Secretary of Agriculture for the state plan submitted pursuant to § 38-35-15, any person seeking to purchase, receive, or obtain industrial hemp, other than industrial hemp product and industrial hemp stalk bales, for planting, storing, propagating, or producing shall apply to the secretary for a grower license on an application form prescribed by the department and submit a nonrefundable annual application fee. The secretary shall deposit fees collected under this chapter in the hemp regulatory program fund.

An application for licensure to plant, grow, or produce industrial hemp must be for at least one-half, contiguous outdoor acre with a three hundred plant minimum, or in a greenhouse with a fifty plant minimum, or combination thereof. No industrial hemp grower's license may be issued by the secretary to plant, grow, or produce industrial hemp within the corporate limits of any incorporated municipality without receiving verification from the municipality that it meets all applicable municipal zoning regulations.

Section 3. That § 38-35-5 be AMENDED:

38-35-5. Each applicant for any license under this chapter, key participant, and landowner, if the applicant is the lessee, shall submit to a state and federal criminal background investigation by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation. A licensed applicant must only submit to a background criminal investigation pursuant to this section once every three years, unless requested by the secretary. Upon application for a license, the department shall submit ~~the completed fingerprint cards~~ fingerprints to the division. Upon completion of the criminal background check, the division shall forward to the department all information obtained as a result of the criminal background check. This information must be obtained prior to the licensure of the applicant. All costs or fees associated with the criminal background checks are the responsibility of the applicant. Information provided to the department under this section is confidential, is not public record, and is exempt from the provisions of chapter 1-27. However, the department may share this information with law enforcement and the Department of Public Safety. Failure to submit to or cooperate with a criminal background check is grounds for denial or revocation of a license. The secretary may deny licensure if any applicant, key participant, or landowner has been convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law within the previous ten years. Licensure under this chapter is not required for employees of the state of South Dakota if performing official duties. Any person who has

previously submitted ~~a fingerprint card~~ fingerprints to the Division of Criminal Investigation as part of an application under the hemp program is not required to resubmit ~~a fingerprint card~~ fingerprints but shall authorize the use of the previously submitted fingerprints for an updated state and federal background check. All costs or fees associated with the criminal background checks are the responsibility of the applicant. The secretary may waive the requirement that landowners submit ~~a fingerprint card~~ fingerprints for a state and federal background check if the applicant is unable to have a fingerprint card completed. Other types of background checks may be required in lieu of ~~fingerprint card~~ submitting fingerprints on cards or online.

Section 4. That § 38-35-7 be AMENDED:

38-35-7. If the applicant has completed the application to the satisfaction of the secretary, paid the application fee, returned a criminal background check compliant with § 38-35-5, and is eligible for a license under this chapter, the secretary shall issue the license upon receipt of an annual license fee.

A grower~~,~~ or research~~, or processor~~ license issued under this chapter is valid for fifteen months from the date of issuance. A processor license issued under this chapter is valid for up to three years from the date of issuance.

The department may deny, revoke, or suspend a license of any person who:

(1) Violates any provision of this chapter or administrative rule promulgated under the authority of this chapter;

(2) Violates any rule set forth by the United States Department of Agriculture regarding industrial hemp;

(3) Provides false or misleading information in connection with any application required by this chapter;

(4) Has been convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law within the previous ten years;

(5) Has been charged with or convicted of a misdemeanor or felony relating to a controlled substance or marijuana under state or federal law since the most recent criminal background check; or

(6) Requests the secretary to revoke or suspend the license.

Any person whose license is denied, revoked, or suspended under this section may request a hearing pursuant to chapter 1-26.

Section 5. That § 38-35-10 be AMENDED:

38-35-10. At the discretion of the secretary, a grower licensee may be inspected and samples collected no more than thirty days before the hemp is harvested. The grower licensee shall contact the ~~Department of Public Safety~~ department prior to harvest ~~in order~~ to ensure a reasonable amount of time to schedule an inspection. The grower licensee is required to be present during the inspection. No harvested lot of hemp ~~shall~~ must be commingled with another harvested lot of hemp and no hemp may leave the dominion of control of the grower licensee until the grower licensee receives a laboratory result from the department that confirms each lot complies with 7 U.S.C. Chapter 38, Subchapter VII, as provided in 7 C.F.R §§ 990.70(d) and 990.71(d) in effect as of March 22, 2021.

Any location of the processor licensee is subject to random inspection. The processor licensee is required to be present during the inspection.

At the discretion of the secretary, a research licensee may be inspected, and samples may be collected. The research licensee is required to be present during the inspection.

Section 6. That § 38-35-14 be AMENDED:

38-35-14. The department compliance testing must be conducted by a laboratory approved by the Drug Enforcement Administration. The laboratory shall report the total delta-9 tetrahydrocannabinol concentration level and the measurement of uncertainty for each sample tested pursuant to this section. If a test reveals a total delta-9 tetrahydrocannabinol concentration of more than three-tenths of one percent but not more than ~~five-tenths of~~ one percent, the licensee may request a retest at the licensee's expense. If upon the retesting, the total delta-9 tetrahydrocannabinol concentration exceeds three-tenths of one percent, the entire lot from which the noncompliant sample was collected ~~shall~~ must either be destroyed or remediated and retested according to the United States Department of Agriculture guidelines. However, a sample that tests a result within a measurement of uncertainty that produces a range that includes a total delta-9 tetrahydrocannabinol concentration of three-tenths of one percent is compliant for the purposes of this chapter.

Signed March 6, 2024

ANIMALS AND LIVESTOCK

Chapter 169

(Senate Bill 172)

An Act to allow a person to temporarily take responsibility of a feral cat for the purpose of spaying or neutering the animal.

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

Section 1. That § 40-1-2.3 be AMENDED:

40-1-2.3. No person owning or responsible for the care of an animal may neglect, abandon, or mistreat the animal, except that any person may abandon a feral cat for which the person assumed responsibility with the sole purpose of spaying or neutering the cat. A violation of this section is a Class 1 misdemeanor.

Signed March 6, 2024

Chapter 170

(House Bill 1145)

An Act to modify brand registration and use laws.

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

Section 1. That § 40-20-4 be AMENDED:

40-20-4. Except as otherwise provided in this chapter, it is a ~~Class 1~~ Class 2 misdemeanor ~~for any person~~ to remove or authorize the removal of ~~any~~ livestock from any point within the livestock ownership inspection area, to any point within one mile of the border with a destination outside the ownership inspection area, unless the livestock have ~~first~~ been inspected for ownership and ~~unless~~ the shipper possesses the local ownership inspection certificate, market clearance, ~~shippers~~ shipper's permit, or ~~such~~ other form of authorization ~~as may be~~ required by the board.

Except as otherwise provided in § 40-20-29, a local ownership inspection certificate is valid for the transportation of livestock, other than horses, out of the livestock ownership inspection area for twenty-four hours after the time of the inspection, as noted on the inspection certificate. In the case of horses, the certificate is valid for thirty days after the date of the inspection, as noted on the certificate.

If there is no valid local ownership inspection certificate, the livestock ~~shall~~ must be inspected before leaving the ownership inspection area.

Livestock being removed from the ownership inspection area, without authorization from the board, may be impounded by any law enforcement officer, until the livestock are inspected for ownership by an ~~authorized brand~~ inspector.

The venue for the prosecution of any offense under this section is ~~in~~ the county where ~~such~~ the livestock were loaded, or ~~in~~ any county through which the livestock were transported or trailed.

Any livestock being transported to a destination outside the ownership inspection area ~~shall~~ must be inspected for ownership if they cease to be in the custody of the carrier at any time prior to leaving the ownership inspection area.

Any livestock shipper within the livestock ownership inspection area wanting livestock inspected, as provided in this section, shall notify an inspector in advance of the inspection and allow the inspector reasonable time to provide the inspection.

Section 2. That § 40-20-4.2 be AMENDED:

40-20-4.2. It is a Class 1 misdemeanor to ~~make an inspection~~ inspect six or more head of livestock while the livestock are ~~loaded~~ in or on any conveyance.

An inspector may, at any time, require the removal of one or more head of livestock from a conveyance, for purposes of inspection.

The inspector shall tally the livestock according to the number of head, sex, and brands.

Section 3. That § 40-20-10 be AMENDED:

40-20-10. If authorization is required, it is a ~~Class 1~~ Class 2 misdemeanor for ~~any~~ a carrier or owner to transport ~~any~~ livestock from the livestock ownership

inspection area or to within a mile of the border with a destination outside the livestock ownership inspection area unless the carrier or owner is in possession of authorization by the board.

Section 4. That § 40-20-12 be AMENDED:

40-20-12. If livestock shipped from the livestock ownership inspection area are consigned to an open market, as described in § 40-20-6, it is a ~~Class 1~~ Class 2 misdemeanor for any person to change the consignment to a point other than a livestock market previously designated by the board as an open market, unless the livestock receive a livestock ownership inspection and the carrier receives a certificate or clearance from the board showing that all the livestock ~~belongs~~ belong to the shipper.

Section 5. That § 40-20-26.1 be AMENDED:

40-20-26.1. It is a ~~Class 1~~ Class 2 misdemeanor for any person to sell or to transfer ownership of any livestock within the livestock ownership inspection area without ~~first~~ obtaining an ownership inspection, except as provided in § 40-20-26.

Section 6. That § 40-20-26.2 be AMENDED:

40-20-26.2. ~~The provisions of~~Notwithstanding § 40-20-26.1 ~~notwithstanding~~, ownership of livestock with the seller's South Dakota recorded and healed brand or the owner's unbranded livestock may be transferred by means of an authorized bill of sale, without a brand inspection. The bill of sale ~~shall~~ must be on a form prescribed by the board. A copy of ~~an authorized~~ the bill of sale ~~shall~~ must be forwarded to the board.

An authorized bill of sale ~~does~~ is not a substitute for the inspection of livestock being removed from the ownership inspection area of ~~South Dakota~~ this state.

An authorized bill of sale may not be used to transfer ~~no~~ ownership of more than five head of livestock to any one buyer. Multiple authorized bills of sale may not be executed to subdivide numbers of livestock greater than five to any one buyer.

~~The transfer of livestock without an authorized bill of sale under this section or in violation of the requirements relating to the number of livestock that may be transferred to a single buyer is a Class 1~~ A violation of this section is a Class 2 misdemeanor.

Signed February 15, 2024

GAME, FISH, PARKS AND FORESTRY

Chapter 171

(Senate Bill 54)

An Act to update hunting and fishing residency requirements.

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

Section 1. That § 41-1-1 be AMENDED:

41-1-1. Terms used in this title mean:

(1) "Any part thereof" or "the parts thereof," includes the hide, horns, and hoofs of any animal so referred to, and the plumage and skin and every other part of any bird so referred to;

(2) "Bait," baitfish, frogs, toads, salamanders, crayfish, freshwater shrimp, clams, snails and leeches;

(3) "Baitfish," includes fish of the minnow family (cyprinidae) except carp (cyprinus spp.) and goldfish (carassius spp.), fish of the sucker family (castostomidae) except buffalofish (ictiobus spp.) and carpsucker (carpiodes spp.), and fish of the stickleback family (gasterosteidae);

(4) "Big game," all cloven-hoofed wild animals, wild mountain lion, wild black bear, and wild turkey. The term includes facsimiles of big game used for law enforcement purposes, but does not include any captive nondomestic animal of the mammalia class and the products thereof regulated by the Animal Industry Board under Title 40;

(5) "Big game seal," a locking seal which bears the same number as the license with which it is issued;

(6) "Big game tag," a tag which is part of the regular big game license and bears the same number as the license proper;

(7) "Biological specimens," wild nongame animals used for scientific study and collected for resale to biological supply companies;

(8) "Carcass," the dead body of any wild animal to which it refers, including the head, hair, skin, plumage, skeleton, or any other part thereof;

(9) "Domestic animal," any animal that through long association with man, has been bred to a degree which has resulted in genetic changes affecting the temperament, color, conformation, or other attributes of the species to an extent that makes it unique and different from wild individuals of its kind;

(10) "Domicile," a person's established, fixed, and permanent home ~~to~~, in which the person physically lives, and, whenever absent, has the present intention of returning;

(11) "Fishing," the taking, capturing, killing, or fishing for fish of any variety in any manner. If the word, fish, is used as a verb, it has the same meaning as the word, fishing;

(12) "Fur-bearing animals," opossum, muskrat, beaver, mink, marten, river otter, fisher, blackfooted ferret, skunks (all species), raccoon, badger, red, grey and swift fox, coyote, bobcat, lynx, weasel, and jackrabbit;

(13) "Game," all wild mammals or birds;

(14) "Game fish," all species belonging to the paddlefish, sturgeon, salmon (trout), pike, catfish (including bullheads), sunfish (including black bass and crappies), perch (including walleye and sauger), and bass families. All species not included in the game fish families are rough fish;

(15) "Hunt" or "hunting," shooting, shooting at, pursuing, taking, attempting to take, catching, or killing of any wild animal or animals;

(16) "Migratory waterfowl," any wild geese, swans, brants, coot, merganser, or wild ducks;

(17) "Migratory bird," all migratory waterfowl, sandhill crane, snipe, and dove;

(18) "Motor vehicle," any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle, whether operated upon a highway, railroad track, on the ground, in the water, or in the air;

(19) "Nondomestic animal," any animal that is not domestic;

(20) "Possession," both actual and constructive possession, as well as the control of the article referred to;

(21) "Predator/varmint," coyote, wolf, gray fox, red fox, skunk, gopher, ground squirrel, chipmunk, jackrabbit, marmot, opossum, porcupine, crow, and prairie dog;

(22) "Resident," a person having a domicile within this state for at least ninety consecutive days immediately preceding the date of application for, purchasing, or attempting to purchase any license required under the provisions of this title or rules of the commission, who makes no claim of residency in any other state or foreign country for any purpose, and other than for a person described in § 41-1-1.1, claims no resident hunting, fishing, or trapping privileges in any other state or foreign country, and prior to any application for any license, transfers to this state the person's driver's license and motor vehicle registrations. Documentation showing a mailing address, ownership of a property or a business, or employment in the state is not sufficient by itself to prove that a person has a domicile in or is a resident of this state;

(23) "Sell" and "sale," any sale or offer to sell or have in possession with intent to sell, use, or dispose of;

(24) "Small game," anatidae, commonly known as swans, geese, brants, merganser, and river and sea ducks; the rallidae, commonly known as rails, coots, and gallinule; the limicolae, referring specifically to shore birds, plover, snipe, and woodcock; the gruidae, commonly known as sandhill crane; the columbidae, commonly known as the mourning dove; the gallinae, commonly known as grouse, prairie chickens, pheasants, partridges, and quail but does not include wild turkeys; cottontail rabbit; and fox, grey and red squirrel. The term includes facsimiles of small game used for law enforcement purposes;

(25) "Trapping," the taking or the attempting to take of any wild animals by means of setting or operating of any device, mechanism, or contraption that is designed, built, or made to close upon, hold fast, or otherwise capture a wild animal or animals. If the word, trap, is used as a verb, it has the same meaning as the word, trapping;

(26) "Trout streams" or "trout waters," all waters and streams or portions of streams which contain trout;

(27) "Waters of the state," all the boundary waters of the state, and the provisions of this title are deemed to extend to and be in force and effect over and upon and in all thereof, unless otherwise expressly provided; and

(28) "Wild animal," any mammal, bird, fish, or other creature of a wild nature endowed with sensation and the power of voluntary motion.

Section 2. That § 41-1-1.2 be AMENDED:

41-1-1.2. Except for a person who continues to qualify for resident privileges as provided in § 41-1-1.1, a person is deemed to have terminated the person's South Dakota resident status if the person applies for, purchases, or accepts a resident hunting, fishing, or trapping license issued by another state or

foreign country; registers to vote in another state or foreign country; accepts a driver's license issued by another state or foreign country; ~~or~~ moves to any other state or foreign country and makes it the person's domicile or makes any claim of residency for any purpose in the other state or foreign country; or when a person resides in any other state, territory, or country for an aggregate of one hundred eighty or more days in a calendar year. However, a person who has lawfully acquired a resident hunting, fishing, or trapping license and who leaves the state after acquiring the license to take up residency elsewhere may continue to exercise all the privileges granted by the license until the license expires if the person's respective privileges are not revoked or suspended pursuant to §§ 41-6-75 to 41-6-75.2, inclusive.

Signed February 5, 2024

Chapter 172

(Senate Bill 173)

An Act to provide a landowner-on-own-land license for antlerless elk.

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

Section 1. That a NEW SECTION be added to chapter 41-6:

The Game, Fish and Parks Commission shall, by rules promulgated pursuant to chapter 1-26:

(1) Establish the number of resident landowner-on-own-land licenses available for the taking of antlerless elk;

(2) Establish eligibility criteria for the license; and

(3) Establish the fee for the license.

Upon receipt of an application, as prescribed by the Department of Game, Fish and Parks, and payment of the requisite license fee, the department shall issue a landowner-on-own-land license that authorizes the holder to take one antlerless elk, from land owned or leased by the holder, for agricultural purposes, within a designated unit, during the prairie elk hunting season.

Signed March 15, 2024

Chapter 173

(House Bill 1228)

An Act to provide that required exterior hunting garments may be fluorescent pink.

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

Section 1. That § 41-8-41 be AMENDED:

41-8-41. ~~Any~~ A person ~~hunting~~ using a firearm to hunt any big game animal, ~~except~~ other than a turkey or a mountain lion, ~~with a firearm~~ shall wear,

in a visible manner ~~one or more~~ above the waist, a fluorescent orange ~~exterior garments. The~~ or fluorescent pink exterior garment ~~shall be~~.

For purposes of this section, the term "exterior garment" means a hat, cap, shirt, jacket, vest, coverall, or poncho ~~worn above the waist~~.

A violation of this section is a Class 2 misdemeanor.

Signed March 5, 2024

Chapter 174

(Senate Bill 55)

An Act to remove multiple vehicle ownership as a condition for purchasing an additional park entry license at a reduced price.

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

Section 1. That § 41-17-13 be AMENDED:

41-17-13. A park license may be required to permit a motor vehicle and the occupants ~~entrance to~~ entry into any state park ~~(~~, except Bear Butte when used by ~~persons~~ individuals participating in a religious ~~activities)~~ activity, and ~~to~~ into any of the following lakeside use or state recreation areas ~~or state lakeside use areas: Lake Poinsett; the Yankton unit, the Midway unit, and the Gavins Point unit of Lewis and Clark Lake; Sandy Shore; Farm Island; Mina Lake; Richmond Lake; Lake Louise; Pickerel Lake; Angostura; Lake Vermillion; Shadehill; Llewellyn Johns; Burke Lake; Lake Cochrane; West Whitlock; Swan Creek; West Bend; Snake Creek; Walker's Point; Platte Creek; Lake Alvin; Pelican Lake; Bush's Landing; Little Bend; Lake Hiddenwood; East Whitlock; Sutton Bay; Dodge Draw; Lake Thompson; Indian Creek; Downstream (below Oahe Dam); North Point; American Creek; Randall Creek; Chief White Crane; Pierson Ranch; Spring/Cow Creek; Okobojo Point; Walth Bay; Spillway (Fort Randall Dam); Pease Creek; North Wheeler; Whetstone Bay; East Shore; Peoria Flats; West Shore; West Chamberlain; South Shore; Tailrace (Fort Randall Dam); Revheim Park; Springfield; Buryanek; West Pollock; Bob's Landing; Rocky Point; and Big Sioux~~:

(1) Angostura;

(2) American Creek;

(3) Big Sioux;

(4) Bob's Landing;

(5) Burke Lake;

(6) Buryanek;

(7) Bush's Landing;

(8) Chief White Crane;

(9) Cow Creek;

(10) Dodge Draw;

(11) Downstream below Oahe Dam;

(12) East Shore;

(13) East Whitlock;

(14) Farm Island;

(15) Indian Creek;

(16) Lake Alvin;

(17) Lake Cochrane;

(18) Lake Hiddenwood;

(19) Lake Louise;

(20) Lake Poinsett;

(21) Lake Thompson;

(22) Lake Vermillion;

(23) Lewis and Clark Lake's Gavins Point unit, the Midway unit, and the Yankton unit;

(24) Little Bend;

(25) Llewellyn Johns;

(26) Mina Lake;

(27) North Point;

(28) North Wheeler;

(29) Okobojo Point;

(30) Peoria Flats;

(31) Pease Creek;

(32) Pelican Lake;

(33) Pickerel Lake;

(34) Pierson Ranch;

(35) Platte Creek;

(36) Randall Creek;

(37) Revheim Park;

(38) Richmond Lake;

(39) Rocky Point;

(40) Sandy Shore;

(41) Shadehill;

(42) Snake Creek;

(43) South Shore;

(44) Spillway at Fort Randall Dam;

(45) Spring Creek;

(46) Springfield;

(47) Sutton Bay;

(48) Swan Creek;

(49) Tailrace at Fort Randall Dam;

(50) Walker's Point;

(51) Walth Bay;

(52) West Bend;

(53) West Chamberlain;

(54) West Pollock;

(55) West Shore;

(56) West Whitlock; and

(57) Whetstone Bay.

The Game, Fish and Parks Commission shall, by rules promulgated pursuant to chapter 1-26, set annual and daily ~~park entrance~~ license fees for entry into a state park, lakeside use area, or state recreation area.

The ~~Game, Fish and Parks Commission~~ commission shall, by rules promulgated pursuant to chapter 1-26, establish a system by which ~~owners of two or more vehicles~~ an individual may purchase ~~an additional~~ a second license each year for ~~each vehicle registered to the same owner for~~ one-half the price of the ~~annual~~ first license.

~~All~~ The department shall deposit all fees collected pursuant to this section ~~shall be deposited~~ in the parks and recreation fund established in § 41-17-21.

Signed February 21, 2024

RECREATION AND SPORTS

Chapter 175
(Senate Bill 35)

An Act to provide that certain personal information of a lottery prize winner may only be used for advertising or promotion with the winner's consent.

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

Section 1. That chapter 42-7A be amended with a NEW SECTION:

The personal information of a lottery prize winner may only be used in advertising or promotion with the written consent of the winner. If the South Dakota Lottery obtains written consent from the winner, the lottery may only use the information to which the winner consented. This section does not apply to the personal information of any winner of a promotional drawing offered by the lottery.

Terms used in this section mean:

(1) "Personal information," the prize winner's name, address, gender, age, and photograph; and

(2) "Promotional drawing," a second-chance drawing or a public contest or other giveaway that does not require payment to participate.

Signed February 15, 2024

PROPERTY

Chapter 176

(House Bill 1231)

An Act to place restrictions on the ownership of agricultural land.

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

Section 1. That § 43-2A-1 be AMENDED:

43-2A-1. ~~For purposes of this chapter, the term "agricultural land" means land capable of use in the production of agricultural crops, timber, livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit and other horticultural products but does not include any royalty interest, any oil, gas, or other mineral interest, or any lease, right of way, option, or easement relating thereto, or any land zoned by a local governmental unit for a use other than and nonconforming with agricultural use~~

Terms used in this chapter mean:

(1) "Agricultural land," land capable of being used in the production of:

(a) Agricultural crops;

(b) Fruit and other horticultural products;

(c) Livestock or livestock products;

(d) Milk or dairy products;

(e) Poultry or poultry products; or

(f) Timber;

(2) "Foreign entity," any organization that:

(a) Is registered outside of the United States or its territories; or

(b) Has more than ten percent ownership by a foreign government, foreign person, or any combination thereof. However, this permissive threshold does not apply to a prohibited entity;

(3) "Foreign government," a government or state-controlled enterprise of a government, other than the United States, its states, its territories, or its federally recognized Indian tribes;

(4) "Foreign person," a natural person who is not a United States citizen or a resident;

(5) "Prohibited entity," a foreign entity from, foreign government from, or foreign person from:

(a) The People's Republic of China;

(b) The Republic of Cuba;

(c) The Islamic Republic of Iran;

(d) The Democratic People's Republic of Korea;

(e) The Russian Federation; or

(f) The Bolivarian Republic of Venezuela; and

(6) "Resident", any individual who is a legal resident of this state, of another state or territory of the United States, or of the District of Columbia, and makes no claim of residency in a foreign country.

Section 2. That a NEW SECTION be added to chapter 43-2A:

Any person required to submit a report to the United States Department of Agriculture in accordance with the Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. § 3501 et seq. (January 1, 2024) shall file a copy of the required report with the secretary of the Department of Agriculture and Natural Resources, within the time period required for submission under 7 U.S.C. § 3501.

Section 3. That § 43-2A-2 be AMENDED:

43-2A-2. ~~No alien, who is not a resident of this state, of some state or territory of the United States or of the District of Columbia; and no foreign government shall hereafter acquire agricultural lands, or any interest therein, exceeding one hundred sixty acres, except such as may be acquired by devise or inheritance, and such as may be held as security for indebtedness. The provisions of this section do not apply to citizens, foreign governments or subjects of a foreign country~~The following provisions apply to the ownership or leasing of agricultural land in this state:

(1) A prohibited entity may not own agricultural land in this state;

(2) A prohibited entity may not lease or hold an easement on agricultural land in this state, unless:

(a) The lease is exclusively for agricultural research purposes and encumbers no more than three hundred and twenty acres; or

(b) The lease is exclusively for contract feeding of livestock, at an animal feeding operation, by a family farm unit, a family farm corporation, or an authorized farm corporation;

(3) Excluding a prohibited entity, a foreign entity, foreign government, or foreign person may not own more than one hundred and sixty acres of agricultural land in this state, provided this limitation does not include:

(a) Agricultural land acquired by devise or inheritance; or

(b) Agricultural land held as security for indebtedness; and

(4) Excluding a prohibited entity, there is no restriction on easements or the number of acres of agricultural land that a foreign entity, foreign government, or foreign person may lease.

This section does not apply to a foreign entity, foreign government, or foreign person whose right to hold land ~~are~~ is secured by treaty.

Section 4. That § 43-2A-3 be AMENDED:

43-2A-3. ~~All nonresident aliens who may acquire agricultural lands~~Any foreign entity, foreign government, foreign person, or prohibited entity that acquires agricultural land in this state by devise or descent ~~shall have~~, in violation of this chapter, has three years from the ~~date of so acquiring such title in which to alienate such agricultural lands~~ transfer of ownership to dispose of the land.

Any foreign entity who violates this chapter by other means has two years from the initial date of the violation to comply with this chapter or to dispose of the property.

Section 5. That § 43-2A-5 be AMENDED:

43-2A-5. Any ~~nonresident alien~~ foreign person who is or becomes a ~~bona fide~~ resident ~~of this state, of some state or territory of the United States or of the District of Columbia, shall have the right to~~ may acquire and hold agricultural ~~lands~~ land in this state, upon the same terms as ~~citizens~~ a resident of this state, during the continuance of ~~such bona fide residence. However, if such resident alien~~ the residency.

If the foreign person ceases to be a ~~bona fide~~ resident, ~~he shall have~~ the foreign person has three years from the time ~~of termination of~~ the residency ~~in which to alienate agricultural lands~~ is terminated to dispose of agricultural land in excess of one hundred sixty acres.

Section 6. That § 43-2A-6 be AMENDED:

43-2A-6. ~~All agricultural lands acquired or held in violation of §§ 43-2A-2 and 43-2A-3 shall be~~ Any agricultural land owned in violation of this chapter is forfeited to the state. Any agricultural land lease, or easement, held by a prohibited entity in violation of this chapter, is terminated.

The attorney general shall enforce ~~such forfeiture. However, no such~~ the forfeiture or the termination of a lease or easement. A forfeiture or a termination of a lease or easement may not be adjudged unless the action to enforce is brought within three years after ~~such property has been acquired or held by such alien~~ evidence of a violation of this chapter is referred to the attorney general, as provided for in section 7 of this Act. No title to land is invalid or liable to forfeiture by reason of the alienage of any former owner or interested person ~~interested therein~~.

Section 7. That a NEW SECTION be added to chapter 43-2A:

The Department of Agriculture and Natural Resources shall refer evidence of noncompliance to the attorney general, who shall investigate the evidence for violations of this chapter. The attorney general may bring an action pursuant to title 15 to enforce this chapter.

After the attorney general commences an enforcement action, the attorney general may, in addition to any authority granted under §§ 15-6-28.2 to 15-6-28.4, inclusive, subpoena from a subject foreign entity, foreign government, foreign person, or prohibited entity:

(1) Real property titles;

(2) Deeds;

(3) Real estate transaction documents;

(4) Financing or financial documents related to the ownership or financing of the agricultural land transaction;

(5) Documents depicting the identity of any party to the agricultural land transaction; and

(6) Any other information necessary to demonstrate a violation of § 43-2A-2.

Section 8. That a NEW SECTION be added to chapter 43-2A:

The attorney general shall prove any violation of § 43-2A-2 by a preponderance of the evidence.

Section 9. That a NEW SECTION be added to chapter 43-2A:

A foreign entity, foreign government, foreign person, or prohibited entity, whose agricultural land interest was forfeited by an enforcement action brought by the attorney general, may appeal within thirty days of the judgment, pursuant to chapter 15-26A.

Section 10. That § 43-2A-7 be AMENDED:

43-2A-7. The Department of Agriculture and Natural Resources shall ~~monitor, for compliance to this chapter, biannual reports~~ review:

(1) Any report received by the department in accordance with section 2 of this Act;

(2) Any report transmitted to the department pursuant to ~~section 6 of the United States~~ the Agricultural Foreign Investment Disclosure Act of 1978~~. If this review reveals evidence of noncompliance with this chapter the Department of Agriculture and Natural Resources shall~~, 7 U.S.C. § 3505 (January 1, 2024);

(3) Any annual report required by § 59-11-24; and

(4) Any report voluntarily submitted by a county register of deeds alleging a violation of this chapter.

If the department has reason to believe that a violation of this chapter may have occurred, the department must refer ~~this~~ the evidence to the attorney general, who ~~shall~~ must investigate ~~the case and initiate legal action if necessary in the circuit court district in which the land held in violation of § 43-2A-4 is situated~~ in accordance with section 7 of this Act.

Section 11. That § 43-2A-8 be AMENDED:

43-2A-8. ~~The restrictions of this chapter do~~This chapter does not apply to agricultural land owned by a ~~corporation~~ foreign entity, a foreign government, or a foreign person for an immediate or potential nonagricultural use ~~in nonfarming purposes. A corporation~~.

A foreign entity, a foreign government, or a foreign person may hold ~~such~~ agricultural land in ~~such acreage as may be~~ an amount necessary ~~to its nonfarm~~ for the conduct of its nonagricultural business operations. ~~However, pending~~ Pending the development of agricultural land for ~~nonfarm purposes, such~~ a nonagricultural use, the land may not be used for farming, except under lease to a family farm unit, a family farm corporation, or an authorized farm corporation.

A foreign entity, foreign government, or foreign person developing land for nonagricultural use has five years from acquiring interest to initiate a nonagricultural business operation or be deemed in violation of this chapter.

For purposes of this section, the term "nonagricultural business operation" includes the filing of a permit or an application with this state, a political subdivision

of this state, a federally recognized Indian tribe, or a federal agency having jurisdiction over the project for permitting purposes.

All real property owned or held by ~~the State of South Dakota~~ this state by and through the South Dakota State Cement Plant Commission, as of December 28, 2000, is owned or held by it and its successors in title for immediate or potential use for nonfarming purposes and the real property is necessary for nonfarming business operations.

Section 12. That § 59-11-24 be AMENDED:

59-11-24. Each filing entity or qualified foreign entity, except a bank organized under § 51A-3-1.1, a limited partnership organized pursuant to chapter 48-7, or a series of a limited liability company established under §§ 47-34A-701 ~~through~~ to 47-34A-707, inclusive, shall deliver to the Office of the Secretary of State for filing an annual report that sets forth:

(1) The name of the filing entity or qualified foreign entity;

(2) The jurisdiction under whose law it is formed;

(3) The address of its principal office, wherever located;

(4) The information required by § 59-11-6;

(5) The names and business addresses of its governors except ~~in the following two cases~~:

(a) If a business corporation has eliminated its board of directors pursuant to § 47-1A-732, the annual report ~~shall~~ must set forth the names of the shareholders instead; and

(b) If a limited liability company is member-managed, the names and business addresses of its governors need not be set forth; and

(6) Whether the entity owns any agricultural land, as defined in § 43-2A-1, and, if so, whether the entity has any foreign beneficial owners.

If the entity referenced in subdivision (6) is a foreign entity or has any foreign beneficial owners, the filing must also include:

(a) A legal description of the agricultural land or a description of the land's common location;

(b) The total acreage of agricultural land held by the entity; and

(c) The current use of the agricultural land.

Information in the annual report must be current as of the date the annual report is executed on behalf of the filing entity or qualified foreign entity. Any other provisions of law notwithstanding, the annual report may be executed by any authorized person. Any amendment filed is a supplement to, and not in place of, the annual filing required by this section.

On or before December first of each year, the Office of the Secretary of State shall make available to the public an aggregated report listing all foreign entities and entities with foreign beneficial ownership that indicated they owned agricultural land during the reporting period. For each entity listed, the report must include the information gathered under this section.

Signed March 4, 2024

Chapter 177

(Senate Bill 217)

An Act to require disclosure of certain information prior to the sale of property bound by a homeowners' association.

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

Section 1. That § 43-4-42 be AMENDED:

43-4-42. A transfer that is subject to §§ 43-4-37 to 43-4-44, inclusive, and section 2 of this Act is not invalidated solely because a person fails to comply with §§ 43-4-37 to 43-4-44, inclusive, and section 2 of this Act. However, a person who intentionally or who negligently violates §§ 43-4-37 to 43-4-44, inclusive, and section 2 of this Act is liable to the buyer for the amount of the actual damages and repairs suffered by the buyer as a result of the violation or failure. In any court action pursuant to this section, the court may award costs and attorney fees to the prevailing party. Nothing in this section precludes or restricts any other rights or remedies of the buyer or seller.

Section 2. That chapter 43-4 be amended with a NEW SECTION:

In attempting to sell a residential real property governed by a homeowners' association, the seller must furnish to a buyer before the buyer makes a written offer:

(1) A disclosure that the property is governed by a homeowners' association;

(2) A copy of the governing documents of the homeowners' association;

(3) A statement indicating whether there is an assessment and the amount, frequency, and purpose of any assessment; and

(4) A list of any special onetime assessments from the most recent three years.

If, after delivering the homeowners' association information to the buyer or the buyer's agent and prior to the date of closing for the property or the date of possession of the property, whichever comes first, the seller becomes aware of any change of material fact that would affect the information, the seller must furnish a written amendment disclosing the change of material fact.

This section applies to all transfers of residential real property occurring after July 1, 2024.

For the purposes of this section, the term "governing documents" means a written instrument by which the homeowners' association may exercise powers to manage, maintain, or otherwise affect the property under the jurisdiction of the homeowners' association.

For the purposes of this section, the term "homeowners' association" means any incorporated or unincorporated association in which membership is based upon owning or possessing an interest in real property and that has the authority, pursuant to recorded covenants, bylaws, or other governing documents, to assess and record liens against the real property of its members.

Signed March 14, 2024

Chapter 178

(Senate Bill 89)

An Act to reduce the notice requirement period to terminate a tenancy at will.

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

Section 1. That § 43-8-8 be AMENDED:

43-8-8. A tenancy or other estate at will for a residential property, however created, may be terminated by the ~~landlord's~~ landlord giving notice to the tenant in the manner prescribed by § 43-8-9 to remove from the premises within a period, specified in the notice, of not less than ~~one month~~ fifteen days. However, if the tenancy at will is the residence of a tenant who is on active military service or if a person on active military service is an immediate family member of the tenant, the tenant is entitled to two months' notice in the manner prescribed by § 43-8-9 unless:

(1) The tenant has engaged in sustained conduct that is either disruptive to other residents or neighbors, illegal, destructive, ~~or~~ negligent toward the maintenance of the property, or constitutes a material breach in the implied lease conditions; or

(2) The landlord has sold the property or the property has passed to the landlord's estate.

For the purposes of this section, an immediate family member is a spouse or minor child.

Section 2. That a NEW SECTION be added to chapter 43-8:

A tenancy or other estate at will for a commercial property, however created, may be terminated by the landlord giving notice to the tenant in the manner prescribed by § 43-8-9 to remove from the premises within a period, specified in the notice, of not less than one month.

Signed March 14, 2024

Chapter 179

(House Bill 1186)

An Act to define the requirements for granting a carbon pipeline easement.

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

Section 1. That chapter 43-13 be amended with a NEW SECTION:

For the purposes of section 2 of this Act, the term "carbon pipeline easement" means a right, whether or not stated in the form of a restriction, option to obtain an easement, easement, covenant, or condition, in a deed, will, or other instrument executed by or on behalf of an owner of land for the purpose of transmitting carbon dioxide by pipeline.

For the purposes of section 2 of this Act, the term "initiate business operations" means the filing of a permit or an application with the state, a political subdivision of the state, a federally recognized Indian tribe, or a federal agency having jurisdiction over the project for permitting purposes.

Section 2. That chapter 43-13 be amended with a NEW SECTION:

(1) A property owner may grant a carbon pipeline easement in the same manner and with the same effect as a conveyance of an interest in real property. The easement must be created in writing, and the easement or a memorandum thereof must be filed, duly recorded, and indexed in the office of the register of deeds of the county in which the easement is granted.

(2) Any carbon pipeline easement runs with the land benefited and burdened and terminates upon the conditions stated in the easement, except that the term of any such easement may not exceed ninety-nine years.

(3) Any carbon pipeline easement is void if the operator does not initiate business operations within five years after the recording date of the easement.

(4) If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the easement, any such mortgage or encumbrance on the easement is the responsibility of the easement holder and attaches only to the easement holder's rights and does not otherwise attach to the land or obligate the property owner. Each carbon pipeline easement agreement must include a statement disclosing that the easement holder may mortgage or encumber any part of the easement holder's rights and interests under the agreement unless otherwise specified in the agreement.

(5) Any carbon pipeline easement shall expire after five years of nonuse at any time after the issuance of a permit by the Public Utilities Commission.

Signed March 7, 2024

Chapter 180

(House Bill 1118)

An Act to revise unclaimed property provisions.

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

Section 1. That § 43-41B-24 be AMENDED:

43-41B-24. ~~(a)~~ Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all ~~funds~~ moneys received under this chapter, including the proceeds from the sale of abandoned property under § 43-41B-23. The administrator shall retain in a separate trust fund an amount not more than ~~fifty~~ five hundred thousand dollars from which the administrator must make prompt payment of claims duly allowed ~~must be made by him~~. Before making the deposit, the administrator ~~shall~~ must record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary, and with respect to

each policy or contract listed in the report of an insurance company, its number, the name of the company, and the amount due. The record must be available for public inspection at all reasonable business hours.

~~(b) The administrator may pay from the unclaimed property trust fund:~~

~~(1) Any costs in connection with the sale of abandoned property;~~

~~(2) Costs of mailing and publication in connection with any abandoned property;~~

~~(3) Reasonable service charges; and~~

~~(4) Costs incurred in examining records of holders of property and in collecting the property from those holders.~~

Section 2. That § 43-41B-24.1 be AMENDED:

43-41B-24.1. Money in the unclaimed property trust fund for the payment of ~~costs and expenses authorized under § 43-41B-24~~ claims and costs incurred in examining records of holders of property and in collecting the property from those holders is continuously appropriated ~~for those purposes. Any expenditures shall~~. Expenditures for claims and costs incurred in examining records of holders of property and in collecting the property from those holders must be paid upon warrants drawn by the state auditor pursuant to vouchers authorized by the state treasurer. All ~~funds~~ moneys paid out by the state treasurer for claims and costs incurred in examining records of holders of property and in collecting the property from those holders under chapter 43-41B ~~shall~~ must be set forth in an informational budget as described in § 4-7-7.2 and be annually reviewed by the Legislature. ~~Any expenditure other than unclaimed property claims that exceeds the informational budget shall be approved by the Board of Finance pursuant to chapter 4-1.~~

Section 3. That chapter 43-41B be amended with a NEW SECTION:

The operational expenses for unclaimed property, including costs in connection with the sale of abandoned property, personnel, costs of mailing and publication, and service charges, must be paid from general appropriations in the general appropriations act.

Signed March 14, 2024

MINING, OIL AND GAS

Chapter 181

(Senate Bill 111)

An Act to revise requirements for mining and mineral exploration.

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

Section 1. That § 45-6-65 be AMENDED:

45-6-65. An operator shall obtain a license to mine ~~for sand, gravel, rock~~:

(1) Sand;

(2) Gravel;

(3) Rock to be crushed and used in construction~~, pegmatite~~;

(4) Pegmatite minerals ~~or for limestone, iron~~;

(5) Limestone; and

(6) Iron ore, ~~sand,~~ gypsum, shale, pozzolan, ~~or~~ and other materials used in the process of making cement or lime.

The operator shall comply with the requirements of §§ 45-6-68, 45-6-69, 45-6-71, and 45-6-72, for each site to be mined. Failure to comply with these requirements for each site mined constitutes mining without a ~~valid~~ license.

The fee for the license is ~~an annual fee of~~ one hundred dollars annually, for each ~~individual~~ mine site authorized under the license~~, which shall be deposited~~. The department shall forward any fees collected under this section to the state treasurer for deposit in the environment and natural resources fee fund established in § 1-41-23 ~~by the department~~.

Section 2. That § 45-6-71 be AMENDED:

45-6-71. Prior to the commencement of mining, an operator shall submit a surety to the ~~Board of Minerals and Environment a surety~~ department, to be held under the authority of the board.

If a mining operation was licensed prior to July 1, 2024, the surety required by this section must, through June 30, 2026, be in the amount of five hundred dollars per acre of affected land~~. In lieu of filing a surety for each operation, the operator may post a~~ or twenty thousand ~~dollar surety for~~ dollars for the statewide mining of ~~sand, gravel, or rock to be crushed and used in construction~~ any material listed in § 45-6-65.

Beginning July 1, 2026, and continuing through June 30, 2027, the surety for a mining operation that was licensed prior to July 1, 2024, must be in the amount of one thousand five hundred dollars per acre of affected land or one hundred thousand dollars for the statewide mining of any material listed in § 45-6-65.

Beginning July 1, 2027, and continuing through June 30, 2029, the surety for a mining operation that was licensed prior to July 1, 2024, must be in the amount of two thousand seven hundred and fifty dollars per acre of affected land or two hundred thousand dollars for the statewide mining of any material listed in § 45-6-65.

Beginning July 1, 2029, the surety for a mining operation that was licensed prior to July 1, 2024, must be in the amount of three thousand eight hundred and fifty dollars per acre of affected land or three hundred thousand dollars for the statewide mining of any material listed in § 45-6-65.

If a mining operation is licensed on or after July 1, 2024, the surety required by this section must be in the amount of three thousand eight hundred and fifty dollars per acre of affected land or three hundred thousand dollars for the statewide mining of any material listed in § 45-6-65.

If a corporate surety bond is required, the bond ~~shall~~ must be signed by the operator, as principal, and by a surety insurer certified under chapter 58-21.

In lieu of the required surety, the operator may ~~deposit~~ provide to the department, to be held under the authority of the board:

(1) An irrevocable letter of credit;

(2) A cash ~~or a~~ deposit;

(3) A certificate of deposit made payable to the ~~individual and to the~~ board; or ~~government~~

(4) Government securities ~~with the board in an amount equal to that of the required surety~~.

The surety ~~shall~~ must remain in effect until the affected land has been reclaimed, the reclamation is approved by the board, and the surety is released by the board.

Section 3. That chapter 45-6 be amended with a NEW SECTION:

A political subdivision may, in order to avoid the imposition of duplicate surety requirements, enter into a joint powers agreement with the board, provided the political subdivision has established requirements pertaining to reclamation after the mining of any material listed in § 45-6-65.

Section 4. That § 45-6B-55 be AMENDED:

45-6B-55. ~~A~~ The application must be accompanied by:

(1) A nonrefundable fee of one hundred dollars ~~,~~; and ~~a~~

(2) A surety ~~not to exceed two thousand five hundred dollars as~~, in an amount determined sufficient by the ~~Board of Minerals and Environment shall determine, shall accompany the application and shall be paid by the applicant~~ board to cover the cost of reclamation, but not exceeding thirty-eight thousand five hundred dollars.

Section 5. That § 45-6B-81 be AMENDED:

45-6B-81. The board may promulgate rules, pursuant to chapter 1-26, ~~consistent with the provisions of this chapter,~~ to ~~provide for~~:

(1) ~~The~~ Establish the procedure for filing and departmental review of mining permit applications;

(2) ~~The~~ Establish the procedure for amending mining permits;

(3) ~~The~~ Establish the procedure for transfer of permits;

(4) ~~The~~ Provide for the reclamation of mills proposed to be operated in conjunction with a mining operation;

(5) ~~The~~ Establish the prehearing procedure for determining the type of reclamation to be performed on affected land;

(6) ~~The~~Establish the minimum requirements for each type of reclamation;

(7) ~~The~~Establish the reclamation activities required to be performed concurrent with mining activity;

(8) ~~The~~Establish the procedure to ~~be followed to~~ address reclamation before or during a temporary cessation of mining activity, pursuant to subdivision 45-6B-3(6);

(9) ~~The~~Establish the procedure for determining special, exceptional, critical, or unique land, in accordance with § 45-6B-33; ~~and~~

(10) ~~The~~Establish the requirements for construction, operation, monitoring, and closure of uranium and other mineral mines using in situ leach processes; and

(11) Establish the procedure for posting and monitoring financial assurance.

Section 6. That § 45-6C-13 be AMENDED:

45-6C-13. The operator may commence the exploration operation ~~thirty days after filing the notice of intent or~~ upon receipt of the written restrictions provided for in §§ 45-6C-10 to 45-6C-12, inclusive. The department may not issue written restrictions until the operator posts surety pursuant to § 45-6C-19.

Section 7. That § 45-6C-19 be AMENDED:

45-6C-19. The ~~Department of Agriculture and Natural Resources~~ department may inspect the area proposed to be explored. Based upon this inspection, the criteria established in § 45-6C-20, and the submitted reclamation plan, the department shall set the level of the surety necessary to guarantee the costs of plugging all ~~of~~ the proposed test holes and reclamation of affected public and private lands.

The ~~surety~~ operator shall ~~be filed or deposited~~ file or deposit the surety with the department, in a form required by the department, before ~~the operator commences~~ commencing the exploration operation ~~in such form as required by the department~~.

In lieu of filing or depositing a surety for each exploration operation, the operator may post a ~~twenty~~ surety in the amount of one hundred thousand ~~dollar surety~~ dollars for statewide ~~exploring~~ exploration. If a statewide surety is posted, the person posting the surety ~~shall~~ must otherwise comply with the provisions of this chapter for every area to be explored.

Signed March 15, 2024

WATER MANAGEMENT

Chapter 182

(Senate Bill 7)

An Act to revise the water resources projects list.

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

Section 1. That § 46A-1-2.1 be AMENDED:

46A-1-2.1. The Legislature finds that the following water resources projects are necessary for the general welfare of the people of this state and authorizes the projects, pursuant to § 46A-1-2, to be included in the state water resources management system, to serve as the preferred, priority objectives of the state:

(1) Belle Fourche irrigation upgrade project;

(2) Big Sioux flood control study;

(3) Hydrology and water management studies, to manage and protect state water resources for current and future generations;

(4) Cendak irrigation project;

(5) ~~Gregory County pumped storage site;~~

~~(6)~~ Lake Andes-Wagner/Marty II irrigation unit;

~~(7)~~(6) Lewis and Clark rural water system;

~~(8)~~(7) Sioux Falls flood control project;

~~(9)~~(8) Vermillion basin flood control project;

~~(10)~~(9) Water Investment in Northern South Dakota project; and

~~(11)~~(10) Western Dakota Regional Water System study.

Signed January 31, 2024

Chapter 183

(Senate Bill 16)

An Act to make appropriations for water and environmental purposes and to declare an emergency.

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

Section 1. That § 46A-1-2.1 be AMENDED:

46A-1-2.1. The Legislature finds that the following water resources projects are necessary for the general welfare of the people of this state and authorizes the projects, pursuant to § 46A-1-2, to be included in the state water resources management system, to serve as the preferred, priority objectives of the state:

(1) Belle Fourche irrigation upgrade project;

(2) Big Sioux flood control study;

(3) Hydrology and water management studies, to manage and protect state water resources for current and future generations;

(4) Cendak irrigation project;

(5) ~~Gregory County pumped storage site~~Dakota Mainstem regional water system study;

(6) Lake Andes-Wagner/Marty II irrigation unit;

(7) Lewis and Clark rural water system;

(8) Sioux Falls flood control project;

(9) Vermillion basin flood control project;

(10) Water Investment in Northern South Dakota project; and

(11) Western Dakota Regional Water System study.

Section 2. There is hereby appropriated from the South Dakota water and environment fund the sum of $1,000,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing a grant to local project sponsors for a feasibility-level study, system startup, and administration of the Dakota Mainstem regional water system study.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 3. There is hereby appropriated from the South Dakota water and environment fund the sum of $5,000,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing a grant to local project sponsors for the engineering design, preconstruction activities, and construction of the facilities included in the Water Investment in Northern South Dakota project.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 4. There is hereby appropriated from the South Dakota water and environment fund the sum of $1,000,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing a grant to local project sponsors for a feasibility-level study, system startup, and administration of the Western Dakota regional water system study.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 5. There is hereby appropriated from the South Dakota water and environment fund the sum of $4,600,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing grants and loans to project sponsors under the state consolidated water facilities construction program, established pursuant to § 46A-1-63.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 6. There is hereby appropriated from the South Dakota water and environment fund the sum of $2,500,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing grants and loans to project sponsors under the state solid waste management program, established pursuant to § 46A-1-83.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 7. There is hereby appropriated from administrative expense surcharge fees deposited in the state water pollution control revolving fund program subfund the sum of $2,200,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing water quality grants under the state water pollution control revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 8. There is hereby appropriated from administrative expense surcharge fees deposited in the state drinking water revolving fund program subfund the sum of $2,000,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing grants for the construction of drinking water facilities under the state drinking water revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 9. There is hereby appropriated from administrative expense surcharge fees deposited in the state water pollution control revolving fund program subfund the sum of $500,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of contracting for the preparation of applications and the administration of clean water state revolving fund loans under the state water pollution control revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 10. There is hereby appropriated from administrative expense surcharge fees deposited in the state drinking water revolving fund program subfund the sum of $500,000, in other fund expenditure authority, to the Board of Water and Natural Resources for the purpose of contracting for the preparation of applications and the administration of drinking water state revolving fund loans under the state drinking water revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 11. There is hereby appropriated from federal funds deposited in the state drinking water revolving fund program subfund the sum of $300,000, in federal fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing small system technical assistance and local assistance set-aside grants, or contracts, to eligible entities under the state drinking water revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 12. There is hereby appropriated from federal funds deposited in the state water pollution control revolving fund program subfund the sum of $200,000, in federal fund expenditure authority, to the Board of Water and Natural Resources for the purpose of providing small system technical assistance set-aside grants, or contracts, to eligible entities under the state water pollution control revolving fund program, established pursuant to § 46A-1-60.1.

Moneys must be provided according to the terms and conditions established by the Board of Water and Natural Resources.

Section 13. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 14. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 15. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 15, 2024

Chapter 184

(House Bill 1130)

An Act to revise water development district boundaries.

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

Section 1. That § 46A-3A-3 be AMENDED:

46A-3A-3. The East Dakota Water Development District is hereby established. The ~~East Dakota Water Development District~~ district includes ~~all~~:

(1) All of Minnehaha, Moody, ~~Lake, Kingsbury,~~ Brookings, Hamlin, Deuel, Codington and Grant counties; ~~Grafton, Belleview, Adams, Henden, Howard, Clearwater, Canova and Vermillion townships in Miner County;~~

(2) All of Lake County, with the exception of Clarno, Concord, Orland, Wayne, and Winfred townships;

(3) Badger township in Kingsbury County; and ~~all~~

(4) All municipalities that are wholly or partially within the included area or that are contiguous to the included area.

Section 2. That § 46A-3A-7.1 be AMENDED:

46A-3A-7.1. The Vermillion Basin Water Development District is hereby established. The ~~Vermillion Basin Water Development District~~ district includes ~~all~~:

(1) All of Turner, McCook, and Clay counties;

(2) All of Kingsbury County, with the exception of Badger township;

(3) Clarno, Concord, Orland, Wayne, and Winfred townships in Lake County;

(4) Adams, Belleview, Canova, Clearwater, Grafton, Henden, Howard, and Vermillion townships in Miner County; and

(5) All municipalities that are wholly or partially within the included area.

Section 3. That § 46A-3B-2.1 be AMENDED:

46A-3B-2.1. For any water development district having director areas that will be realigned as a result of ~~the provisions of~~ § 46A-3B-2, any director of the district who is in office on January 1, ~~2009~~ 2024, shall continue to serve as a director if the director remains a resident of the district. ~~At the first general election after January 1, 2009, for any such water development district, directors shall be elected for all director positions in the district, regardless of whether or not any director's term has expired. The directors elected for the district at the general~~

~~election shall be elected to serve for staggered terms. Thereafter, directors shall be elected to four-year terms at each subsequent general election to succeed those directors whose terms expire at the end of the year in which the election is held.~~

Section 4. That § 46A-3E-1 be AMENDED:

46A-3E-1. A water development district board of directors may levy taxes, not to exceed thirty cents per thousand dollars of taxable valuation in the district, for accomplishment of the purposes of chapters 46A-3A to 46A-3E, inclusive, and chapters 46A-1 and 46A-2. If an area is included in more than one water development district, that area's tax levy payable to each of the water development districts ~~shall be~~ is determined by multiplying the greater of the overlapping water development districts' levies by each water development district's taxing fraction. Each water development district's taxing fraction is determined by dividing that water development district's proposed tax levy for the overlapped area by the sum of all water development districts' levies for the overlapped area. ~~Any water development district for which boundaries are revised under §§ 46A-3A-2 to 46A-3A-7.1, inclusive, is not considered a new taxing district. If any water development district levied a tax pursuant to chapter 10-13 in a manner used by a new taxing district for taxes payable in 2010, such water development district shall revert to the amount of revenue payable to the district for taxes payable in 2009 including any excess levy approved pursuant to § 10-13-36 before July 1, 2002. The water development district may adjust the maximum amount of revenue payable for property taxes based on the growth and index factor for each year thereafter. Any excess levy approved by the water development district pursuant to § 10-13-36 before July 1, 2002, is null and void.~~

Signed March 14, 2024

Chapter 185

(House Bill 1124)

An Act to provide for the temporary filling of water development district board positions created as a result of population increases.

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

Section 1. That § 46A-3B-3 be AMENDED:

46A-3B-3. As soon as possible following each decennial census of population or any adjustment to a water development district boundary, the Board of Water and Natural Resources shall ascertain whether the number of board members should be adjusted, adjust the same, and redistrict water development district director areas to reflect changes in the population of the water development district, so as to assure equitable representation of all areas within the water development district.

The board may make adjustments to water development district director areas to reflect precinct changes made pursuant to chapter 12-14, if equitable representation of all areas remains assured.

If an adjustment under this section results in an increased number of board members, each additional position must be filled by elective action of the remaining directors, from candidates proposed by nominating petitions signed by at least twenty-five eligible voters in the director area to be represented by the

additional position. The individual chosen by the remaining directors to fill the additional position shall serve until a director is elected at the next general election and takes office, as provided for in § 46A-3B-9.

Signed February 15, 2024

PUBLIC UTILITIES AND CARRIERS

Chapter 186
(Senate Bill 177)

An Act to permit the appointment of a circuit court judge or Supreme Court justice as a member of the Public Utilities Commission in place of a disqualified or incapacitated commissioner.

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

Section 1. That § 49-1-9 be AMENDED:

49-1-9. Such Public Utilities Commission may in all cases conduct its proceedings, when not otherwise particularly prescribed by law, in such manner and places as will best conduce to the proper dispatch of business and to the ends of justice.

A majority of the commissioners shall constitute a quorum for the transaction of business, but no commissioner shall participate in any hearing or proceeding in which he has any conflict of interest or if he is temporarily incapacitated. If a commissioner determines that he is incapacitated or disqualified from participating for any reason in any hearing or proceeding, he shall certify that determination to the Governor, or if the character of the incapacity of any commissioner is such that he is unable to certify his incapacity to the Governor, the commission may make such certification. In the event of any such certification, the Governor shall then appoint an elected constitutional officer, other than the attorney general, to act as a member of the commission in place of the disqualified or incapacitated commissioner for the purpose of such hearing or proceeding only. If all elected constitutional officers, other than the attorney general, have certified to the Governor that the elected constitutional officers are disqualified or otherwise decline the appointment, the Governor may appoint a retired South Dakota circuit judge or retired South Dakota Supreme Court justice to act. If a retired judge or retired supreme court justice is appointed, the judge or justice must be compensated at the rate paid by the Unified Judicial System for compensation of retired judges and justices sitting for a recused judge or justice.

Signed March 7, 2024

Chapter 187

(House Bill 1050)

An Act to update references to certain federal motor carrier regulations.

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

Section 1. That § 49-28A-3 be AMENDED:

49-28A-3. The state hereby adopts Title 49 of the Code of Federal Regulations, subtitle B, chapter I, subchapter A, part 107 (subparts F and G only) and subchapter C, parts 171 to 180, inclusive, as amended through January 1, ~~2023~~ 2024, and Title 49 of the Code of Federal Regulations, subtitle B, chapter III, subchapter B, part 387 and parts 390 to 397, inclusive, as amended through January 1, ~~2023~~ 2024, with the following modifications:

(1) All references to interstate operations must also include intrastate operations except that drivers and motor carriers operating intrastate vehicles and combinations of vehicles with two axles or less or with a gross vehicle weight rating of not more than twenty-six thousand pounds ~~which~~ that are not used to transport hazardous materials requiring placarding under part 177, or designed to transport more than fifteen passengers, including the driver, are not subject to parts ~~390-397~~ 390 to 397, inclusive;

(2) For the purposes of 49 C.F.R. § 391.11(b)(1), a driver must be at least twenty-one years old if engaged in interstate commerce, or transporting hazardous material of a type or quantity requiring placarding under part 177, or operating a vehicle designed to transport more than fifteen passengers, including the driver. All other drivers must be at least eighteen years old;

(3) Unless required by an employer to be medically certified under Title 49 of the Code of Federal Regulations, intrastate drivers are exempt from the physical requirements of 49 C.F.R. § 391.41.

Any violation of part 387 and parts 390 to 396, inclusive, the motor carrier safety requirements governing the qualifications of drivers, driving of motor vehicles, parts and accessories necessary for safe operation, notification and reporting of accidents, assistance with investigations and special studies, hours of service of drivers, inspection, repair, and maintenance is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to registration of cargo tank motor vehicles, registration of persons who offer or transport hazardous materials, general information, regulations and definitions, hazardous materials tables, hazardous materials communication regulations, and test and inspection marking requirements found in parts 107 (subparts F and G only), 171, 172, and 178 to 180, inclusive, is a Class 2 misdemeanor. Any violation of the hazardous materials regulations pertaining to packaging, prohibited shipments, loading and unloading, segregation and separation, retesting and inspection of cargo tanks, and other carriage by regulations found in parts 173 to 180, inclusive, or violation of the driving and parking rules in part 397, is a Class 1 misdemeanor.

Signed February 5, 2024

Chapter 188
(Senate Bill 23)

An Act to exempt an electric vehicle charging station from being subject to a civil fine for overcharging.

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

Section 1. That § 49-34-14 be AMENDED:

49-34-14. Any person who ~~shall~~ knowingly ~~collect from~~ charges any consumer of gas~~, water,~~ or electricity~~, heat, refrigeration, or air~~ an amount greater than that actually ~~used by such customer shall~~ billed by a gas utility or electric utility, as defined in § 49-34A-1, may be punished by a civil fine not exceeding five hundred dollars. Nothing in this section applies to an electric vehicle charging station selling or providing electricity pursuant to § 49-34A-116.

Signed February 5, 2024

Chapter 189
(Senate Bill 201)

An Act to provide new statutory requirements for regulating linear transmission facilities, to allow counties to impose a surcharge on certain pipeline companies, and to establish a landowner bill of rights.

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

Section 1. That a NEW SECTION be added to chapter 10-4:

Pipelines for the transmission of carbon dioxide are not subject to any discretionary formulas authorized by this title.

Section 2. That a NEW SECTION be added to chapter 10-12:

A county may impose a pipeline surcharge up to one dollar per linear foot of carbon dioxide pipeline installed in the county, during any tax year that the carbon dioxide pipeline company claims a tax credit pursuant to 26 U.S.C. § 45Q (January 1, 2024).

For each county where a carbon dioxide pipeline company has installed a pipeline, the company shall report to the county the linear footage of carbon dioxide pipeline installed in the county.

A carbon dioxide pipeline company shall remit the pipeline surcharge to each applicable county in the same manner as provided for the payment of property taxes in chapter 10-21. The revenue derived from the pipeline surcharge must be distributed as follows:

(1) At least fifty percent as tax relief for property in the county where the carbon dioxide pipeline is located pro rata on a per foot basis to each property in the county upon which the pipeline is installed; and

(2) The remaining revenue to be allocated as determined by the county.

Section 3. That § 10-37-3 be AMENDED:

10-37-3. Any pipeline company having lines in this state shall annually, on or before April fifteenth of each year, make out and deliver to the Department of Revenue a statement, verified by the oath of an officer or agent of such pipeline company making such statement, showing in detail for the year ended December thirty-first next preceding:

(1) The name of the company;

(2) The nature of the company, whether a person or persons, an association, copartnership, corporation or syndicate, and under the laws of what state organized;

(3) The location of its principal office or place of business;

(4) The name and post office address of the president, secretary, auditor, treasurer, and superintendent or general manager;

(5) The name and post office address of the chief officer or managing agent in this state;

(6) The whole number of miles of pipeline owned, operated, or leased within the state, including a classification of the size, kind, and weight thereof, separated, so as to show the mileage in each county, and each lesser taxing district;

(7) A full and complete statement of the cost and actual present value of all buildings of every description owned by said pipeline company within the state and each lesser taxing district, not otherwise assessed;

(8) The number, location, size, and cost of each pressure pump or station;

(9) Any and all other property owned by said pipeline company within the state which property shall be classified and scheduled in such a manner as the secretary of revenue may by rule promulgated pursuant to chapter 1-26 require;

(10) The gross earnings of the entire company, and the gross earnings on business done within this state;

(11) The operating expenses of the entire company and the operating expenses within this state; ~~and~~

(12) The net earnings of the entire company and the net earnings within this state; and

(13) Whether or not the pipeline company that installs a pipeline for carbon sequestration claims a tax credit under 26 U.S.C. § 45Q (January 1, 2024) in that year.

Section 4. That § 49-41B-1 be AMENDED:

49-41B-1. The Legislature finds that energy development in South Dakota and ~~the Northern Great Plains significantly~~ surrounding states affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of ~~the~~ agricultural and natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that ~~these~~ facilities are permitted and constructed in an orderly and timely manner so that the energy, commerce, and transmission requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the

location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that the permitting or siting of a facility is determined by the commission and a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

Section 5. That § 49-41B-19 be AMENDED:

49-41B-19. The Public Utilities Commission shall also hear and receive evidence presented by any state department, agency, or units of local government relative to the ~~environmental, social, and economic conditions and projected changes therein~~ elements in § 49-41B-22, and any applicable ordinance, resolution, or building code.

Section 6. That § 49-41B-28 be AMENDED:

49-41B-28. A permit for the construction of a transmission facility within a designated area ~~may supersede or preempt~~ supersedes and preempts any county, township, ~~or~~ municipal, or any other governmental unit land use, zoning, or building ~~rules, regulations~~ rule, regulation, or ordinance. Any local land use, zoning, or building rule, regulation, or ordinance preempted or superseded under this section is not an applicable rule or law under subdivision 49-41B-22(1). A route or transmission facility permitted by the commission under this chapter is not subject to any local land use, zoning, or building rule, regulation, or ordinance, unless the commission requires compliance with any generally applicable rule, regulation, or ordinance as a condition of the permit issued. The enforcement of any county, municipal, township, or other governmental unit rule, regulation, or ordinance for a transmission facility permitted under this chapter must be done pursuant to the order of the commission granting the permit.

~~ordinances upon a finding by the Public Utilities Commission that such rules, or regulation, or ordinances, as applied to the proposed route, are unreasonably restrictive in view of existing technology, factors of cost, or economics, or needs of parties where located in or out of the county or municipality. Without such a finding by the commission, no route shall be designated which violates local land use zoning, or building rules, or regulations, or ordinances~~.

Section 7. That a NEW SECTION be added to chapter 49-41B:

A county, municipality, township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, may not enact or increase, in any form, a tax, fee, or charge that is related to a gas or liquid transmission line or an electric transmission line which requires or holds a permit under chapter 49-41B. The provisions of this section do not prohibit:

(1) Real property taxes pursuant to title 10;

(2) Road use, construction, maintenance, and improvement agreements pursuant to titles 7, 8, 9, or 31; and

(3) The surcharge created by section 2 of this Act.

A county, municipality, township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, may require a gas, liquid, or electrical transmission project to enter into a road use, construction, maintenance, and improvement agreement prior to construction.

Any fee or tax permitted under this section must be uniform and apply to all classes of facilities, except the surcharge listed under subdivision 3 of this section.

If after ninety days the applicant cannot come to terms with a county, municipality township, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, on a road use and maintenance agreement, the applicant may apply to the commission for an order in place of the agreement, specific to that unit of government and after notice and hearing the commission must grant an order determining the applicant's use and restoration of the units, roads, bridges, and rights of way.

Section 8. That a NEW SECTION be added to chapter 49-41B:

All pipelines carrying carbon dioxide must be installed so that the cover between the top of the pipe and the ground level, road bed, river bottom, or underwater natural bottom, as determined by recognized and generally accepted practices, must be a minimum of forty-eight inches in thickness and must be buried so that it is below the level of cultivation.

Section 9. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide is liable for repairs of drain tile, which was installed prior to the installation of the pipeline facility, where the installation, construction, operation, maintenance, or repair of the pipeline facility is the proximate cause of the damage to the drain tile. The operator's liability pursuant to this section shall:

(1) Continue for the life of the pipeline facility;

(2) Cover full replacement costs including without limitation material, labor, and equipment; and

(3) Include the reclamation and restoration of topsoil as part of any drain tile repair.

Section 10. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide shall be liable for all damages resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other failures of the pipeline facility. The operator shall indemnify and hold the surface owner harmless from any loss, claim, or damage resulting from the installation, construction, operation, maintenance, repair, leaks, ruptures, and other failures of the pipeline facility, other than for gross negligence or willful misconduct of the surface owner.

In the event that the surface owner is a county, city, or other governmental unit, including governmental units chartered under S.D. Const., Art. IX, § 2, the operator's liability and indemnification requirements shall include without limitation the governmental unit's road, bridge, and other infrastructure damages.

Section 11. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide must include an agricultural impact mitigation plan in its application for a permit under this chapter.

Section 12. That a NEW SECTION be added to chapter 49-41B:

An operator of a pipeline facility carrying carbon dioxide must offer a dispersion analysis into evidence before the commission. The commission may

enter an order declaring such dispersion analysis, or a portion of the dispersion analysis, confidential. Any order declaring a dispersion analysis, or a portion of the dispersion analysis, as confidential must be justified in specific findings, in writing or on the record.

The commission must make the dispersion analysis available, in relevant part, to each applicable county, emergency manager, and law enforcement agency. The commission shall make available a dispersion analysis report to the public.

Section 13. That a NEW SECTION be added to chapter 49-41B:

A land agent acting on behalf of a pipeline facility carrying carbon dioxide must be a pipeline facility employee, a resident of the state, or a real estate agent licensed in the state.

Section 14. That a NEW SECTION be added to title 43:

Sections 14 to 15, inclusively, of this Act may be cited as the Landowner Bill of Rights.

Section 15. That a NEW SECTION be added to title 43:

Any landowner granting a carbon pipeline easement has the following rights:

(1) Each pipeline placed in a carbon pipeline easement must meet the minimum depth requirement in section 8 of this Act;

(2) The entity holding rights in the carbon pipeline easement must repair any damage to drain tile as set forth in section 9 of this Act;

(3) An operator of a pipeline facility carrying carbon dioxide is liable to a landowner for any leaks or repairs as provided in section 9 of this Act;

(4) An operator of a pipeline facility carrying carbon dioxide must indemnify the owner as provided in section 10 of this Act;

(5) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file the plan as provided in section 11 of this Act;

(6) Any applicant desiring to obtain a permit to operate a pipeline facility carrying carbon dioxide must file a disclosure of the dispersion analysis as provided in section 12 of this Act;

(7) Any applicant desiring to obtain a permit to operate a carbon dioxide pipeline facility must engage a landowner as required by section 13 of this Act;

(8) Each carbon pipeline easement agreement must include a statement disclosing the information in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(9) If the easement holder mortgages or otherwise encumbers to any party any part of the easement holder's rights and interests under the carbon pipeline easement, the mortgage or encumbrance is enforceable only as permitted in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(10) A carbon pipeline easement is not enforceable after the period of time set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(11) An operator of a pipeline facility holding the right in the carbon pipeline easement must initiate business operations within the time period set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(12) A carbon pipeline easement expires after the passing of a period of nonuse as set forth in HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(13) A carbon pipeline easement must be in writing as required by HB 1186, § 2, if enacted by the Ninety-Ninth Legislature;

(14) A landowner granting a carbon pipeline easement has the examination and survey protection rights as set forth in § 21-35-31; and

(15) To receive the one-time payment as provided in HB 1185, § 1, if enacted by the Ninety-Ninth Legislature.

Signed March 7, 2024

Chapter 190

(House Bill 1034)

An Act to require hydrogen pipelines to be permitted by the Public Utilities Commission.

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

Section 1. That § 49-41B-2.1 be AMENDED:

49-41B-2.1. For the purposes of this chapter, a transmission facility is:

(1) An electric transmission line and associated facilities with a design of more than one hundred fifteen kilovolts. However, if ~~such a~~ the transmission line is less than two thousand six hundred forty feet, does not cross any public highway, and eminent domain is not used to obtain right of way, the transmission line is not a transmission facility for purposes of this chapter; or

(2) A gas or liquid transmission line and associated facilities designed for or capable of transporting coal, gas, hydrogen, liquid hydrocarbons, liquid hydrocarbon products, or carbon dioxide, excluding any gas or liquid transmission lines or associated facilities which meet any of the following criteria:

(a) Lines or facilities that are used exclusively for distribution or gathering;

(b) Steel pipe and associated facilities that cannot be operated at a hoop stress of twenty percent or more of specified minimum yield strength as defined by 49 C.F.R. § 192.3 ~~as of~~ (January 1, ~~2013~~ 2024~~,~~) or plastic pipe and associated facilities that cannot be operated at a design pressure of fifty percent or more as determined by the formula specified in 49 C.F.R. § 192.121 ~~as of~~ (January 1, ~~2013~~ 2024); or

(c) Pipe which has nominal diameter of less than four inches and not more than one mile of the entire line is constructed outside of public right-of-way.

Nothing in this section precludes a utility from applying to the commission for a permit for the construction of an electric transmission line and associated facilities with a design of one hundred fifteen kilovolts or less. ~~For the purposes of this chapter such electric~~ The transmission line and associated facilities is a transmission facility for the purposes of this chapter.

Signed February 20, 2024

Chapter 191

(House Bill 1200)

An Act to increase the minimum fee required with an application for construction of an energy conversion and transmission facility.

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

Section 1. That § 49-41B-12 be AMENDED:

49-41B-12. At the time of filing an application as required in § 49-41B-11 ~~or as subsequently required by the commission~~, an applicant ~~shall~~ must deposit the minimum fee with the commission. If required by the commission, an applicant must remit an ~~initial~~ amount to be determined by the commission based upon the ~~estimated~~ actual cost of investigating, reviewing, processing, and serving notice of an application. The amount ~~shall~~ must be deposited with the state treasurer and credited to a subfund within the designated revenue fund and ~~shall~~ may only be disbursed on vouchers approved by the commission for the actual cost of investigating, reviewing, processing, and serving notice of the application. ~~The~~ Except as otherwise agreed to by an applicant, the maximum fee chargeable may not exceed one-quarter of one percent of the first one hundred million dollars of estimated construction cost plus one-twentieth of one percent of all additional estimated construction costs of the facility. To exceed the maximum fee when the applicant has not agreed to a fee higher than the maximum amount, the commission must make a finding upon a motion from the commission staff that all costs incurred were reasonably necessary to investigate, review, process, and serve notice of the application. In these circumstances, the commission must seek reimbursement for those costs, during the next regular legislative session. However, the minimum total fee chargeable may not be less than ~~eight~~ twenty thousand dollars. The minimum fee is nonrefundable unless ordered by the commission.

If the commission determines that an environmental impact statement should be prepared as provided under chapter 34A-9 before taking final action on an application under this chapter, the maximum fee chargeable above may be increased to an amount not to exceed one-half of one percent of the first one hundred million dollars of estimated construction cost plus one-twentieth of one percent of all additional estimated construction costs of the facility. However, the provisions of this paragraph do not apply in cases in which a detailed environment impact study has been completed pursuant to the requirements of the National Environmental Policy Act of 1969 as amended to January 1, 2009, and implementing regulations thereto if such a statement is available to the commission at least thirty days prior to the time the commission is required to render a decision under § 49-41B-24 or 49-41B-25. The provisions of this section apply to all pending permit applications and future permit applications before the commission.

Section 2. That § 49-41B-26 be AMENDED:

49-41B-26. The commission ~~shall~~ must provide the applicant with a full financial accounting relating to the expenditures of the amount received pursuant to § 49-41B-12. Except for the ~~eight~~ twenty thousand dollar minimum fee required pursuant to § 49-41B-12, unused moneys ~~shall~~ must be refunded to the applicant within thirty days of the commission's decision on the application.

Signed March 14, 2024

Chapter 192

(Senate Bill 22)

An Act to amend language regarding the licensing period for a grain buyer.

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

Section 1. That § 49-45-1.1 be AMENDED:

49-45-1.1. Terms used in this chapter mean:

(1) "Commission," the Public Utilities Commission;

(2) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds. The term does not include grain that has been cleaned, processed, and specifically identified for an intended use of planting for reproduction, grain received for consignment that will be processed by the consignee for an intended use of planting for reproduction, or grain purchased to feed livestock;

(3) "Grain broker," a person who is involved in the negotiation of a grain transaction in this state and:

(a) Is compensated for that involvement by at least one party to the transaction; and

(b) Does not take title to the grain that is subject to the transaction;

(4) "Grain buyer," any person who purchases grain for the purpose of reselling the unprocessed grain or who purchases three hundred thousand dollars' worth or more of grain directly from producers in a ~~calendar~~ license year, which begins on July first and ends on June thirtieth. Nothing in this chapter applies to the isolated resale of grain by a producer who does not hold himself or herself out as engaging in the business of reselling grain;

(5) "Holds himself or herself out," the creation of an assumption or the use of any kind of title, sign, symbol, document, or term indicating or conveying the idea that the person whose name is so connected is competent, qualified, authorized, or entitled to engage in certain activities;

(6) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, or joint stock company, or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;

(7) "Producer," a person engaged in the business of grain production; and

(8) "Voluntary credit sale," a sale of grain ~~or seeds~~ pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

Section 2. That § 49-45-7.1 be AMENDED:

49-45-7.1. An applicant may apply for a Class A grain buyer's license or a Class B grain buyer's license. No grain buyer with a Class B grain buyer's license may purchase grain in excess of five million dollars for the annual licensed ~~period~~ year or enter into voluntary credit sale contracts. The commission shall require an applicant for a Class A grain buyer's license to submit a more detailed review of its financial condition than an applicant for a Class B grain buyer's license.

Section 3. That § 49-45-9 be AMENDED:

49-45-9. Before any grain buyer license is issued by the commission, the applicant ~~shall~~ must file with the commission a bond conditioned to secure the faithful performance of the applicant's obligations as a grain buyer and the applicant's full and unreserved compliance with the laws of this state and the rules of the commission, relating to the purchase of grain by the grain buyer. The bond is for the specific purpose of protecting persons selling grain to the grain buyer. However, the bond may not benefit any person entering into a voluntary credit sale with a grain buyer. Any person who does business as a grain buyer without a bond is guilty of a Class 1 misdemeanor. Each day a person conducts the business of a grain buyer without a bond is a separate offense.

The amount of the bond for a Class A or Class B grain buyer's license ~~shall~~ must be based on a rolling average of the dollar amount of grain purchased by the applicant in ~~South Dakota~~ this state during the last three ~~calendar~~ license years. For a new grain buyer, the first year's bond ~~shall~~ must be based on projected purchases. For a grain buyer with less than three years of experience as a grain buyer, the bond ~~shall~~ must be based on the average actual purchases made by the grain buyer in all of its previous years as a grain buyer or projected purchases, whichever amount is higher. The bond applies to all grain purchases for all of the grain buyer's business locations.

The amount of the bond for a Class A grain buyer's license is:

Dollar Amount of Grain Purchased	Bond Requirement
Less than $2,000,001	$50,000
$2,000,001--$5,000,000	$100,000
$5,000,001-$10,000,000	$150,000
$10,000,001-$20,000,000	$200,000
$20,000,001-$30,000,000	$250,000
$30,000,001-$40,000,000	$300,000
$40,000,001-$55,000,000	$350,000
$55,000,001-$70,000,000	$400,000
$70,000,001-$85,000,000	$450,000
$85,000,001-$100,000,000	$500,000

Bond requirements are increased twenty-five thousand dollars for each additional ten million dollars in purchases above one hundred million dollars.

The amount of the bond for a Class B grain buyer's license is:

Dollar Amount of Grain Purchased	Bond Requirement
Less than $2,000,001	$50,000
$2,000,001--$5,000,000	$100,000

The grain buyer may stipulate to a higher bond amount requested by the commission or may post additional security in another form.

Section 4. That § 49-45-10 be AMENDED:

49-45-10. A grain buyer ~~shall~~ must pay the purchase price to the owner or the owner's agent for grain upon delivery or demand of the owner or agent unless payment is to be made in accordance with the terms of a voluntary credit sale ~~which~~ that complies with the requirements of this chapter and rules promulgated thereto. Full payment of any cash purchase ~~shall~~ must be made by the Class A grain buyer within thirty days of final delivery. A Class B grain buyer must pay for the grain included on a uniform scale ticket or comparable receipt, as defined in § 49-45-10.1, within thirty days of issuance.

Signed February 5, 2024

Chapter 193

(House Bill 1135)

An Act to expand definitions pertaining to the purchasing of grain.

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

Section 1. That § 49-45-1.1 be AMENDED:

49-45-1.1. Terms used in this chapter mean:

(1) "Business of a grain buyer," contracting to purchase grain or purchasing grain, regardless of:

(a) Where the grain is to be delivered; or

(b) Where title to the grain transfers;

(2) "Commission," the Public Utilities Commission;

(3) "Contract," except as referenced in § 49-45-21, a written or oral agreement to purchase grain, regardless of the:

(a) Timeline;

(b) Pricing structure; and

(c) Place of delivery;

~~(2)~~(4) "Grain," grain, grain sorghums, beans, pulse crops, and oil seeds~~. The term does not include grain~~ but not:

(a) Grain that has been cleaned, processed, and ~~specifically~~ identified for an intended use of planting for reproduction~~, grain~~;

(b) Grain that is received for consignment ~~that~~ and which will be processed by the consignee for an intended use of planting for reproduction~~,~~; or ~~grain~~

(c) Grain purchased to feed livestock;

~~(3)~~(5) "Grain broker," a person who is involved in the negotiation of a grain transaction in this state and:

(a) Is compensated for that involvement by at least one party to the transaction; and

(b) Does not take title to the grain that is subject to the transaction;

~~(4)~~(6) "Grain buyer," any person who ~~purchases~~:

(a) Contracts to take title to grain;

(b) Purchases unprocessed grain for the purpose of reselling the ~~unprocessed~~ grain; or ~~who purchases~~

(c) Contracts to purchase at least three hundred thousand dollars' worth ~~or more~~ of unprocessed grain directly from producers in a ~~calendar~~ license year, which begins on July first and ends on June thirtieth. Nothing in this chapter applies to the isolated resale of grain by a producer who does not hold himself or herself out as engaging in the business of reselling grain;

~~(5)~~(7) "Holds himself or herself out," the creation of an assumption or the use of any kind of title, sign, symbol, document, or term indicating or conveying the idea that the person whose name is so connected is competent, qualified, authorized, or entitled to engage in certain activities;

~~(6)~~(8) "Person," any natural person, firm, corporation, company, limited liability company, partnership, association, or joint stock company, or the lessee, trustee, or receiver appointed by any court for any one of the foregoing;

~~(7)~~(9) "Producer," a person engaged in the business of grain production; ~~and~~

~~(8)~~(10) "Unprocessed grain," grain that has not been materially altered, or otherwise combined with other grains or products to render the grain only a component part of a different product, provided the cleaning or screening of grain does not constitute processing; and

(11) "Voluntary credit sale," a sale of grain or seeds pursuant to which the sale price is to be paid more than thirty days after the delivery or release of the grain for sale, including those contracts commonly referred to as deferred-payment contracts, deferred-pricing contracts, and price-later contracts.

Signed February 28, 2024

AVIATION

Chapter 194

(Senate Bill 169)

An Act to revise provisions regarding drones.

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

Section 1. That a NEW SECTION be added to chapter 50-15:

No person may intentionally or willfully operate a drone in a careless manner that endangers persons or property, or for voyeuristic or harassment purposes. A person who violates this section is guilty of a Class 1 misdemeanor.

Section 2. That § 50-15-6 be AMENDED:

50-15-6. No person may, except as authorized by law, land a drone on the real or personal property or the waters of a landowner who owns the real property beneath the water body, without the landowner's consent. It is an affirmative defense if the landing was a forced landing or if the landing was caused by a technical malfunction, but in ~~the case of forced landing, the owner or lessee~~ either case, the operator of the drone remains liable for any damage resulting from ~~a forced~~ the landing. A person who violates this section is guilty of a Class 1 misdemeanor.

Section 3. That chapter 50-15 be amended with a NEW SECTION:

A person, in compliance with federal aviation regulations, may operate a drone for recreational purposes within the state. A person or business entity, doing business lawfully within the state and in compliance with federal aviation regulations, may operate or use a drone for commercial purposes within this state. Except as otherwise specifically allowed by this title, the state, or any political subdivision thereof, may not enact or enforce an ordinance regarding:

(1) Ownership, operation, design, manufacture, testing, maintenance, licensing, registration, certification, or equipment requirements of an uncrewed aircraft system;

(2) Airspace, altitude, or flight path restrictions; or

(3) Qualifications, training, or certification of a pilot, operator, or observer of a drone.

Section 4. That chapter 50-15 be amended with a NEW SECTION:

The operation of a drone, in compliance with federal aviation regulations, in the airspace over this state does not, standing alone, give rise to legal liability under the laws of this state or its political subdivisions.

Section 5. That a NEW SECTION be added to chapter 50-15:

Consistent with the provisions of this chapter, a drone may be the instrumentality by which a tort in violation of privacy rights or trespass laws may be committed under federal or state law.

Section 6. That a NEW SECTION be added to chapter 50-15:

A political subdivision may enact or enforce ordinances that relate to the operation of a drone within the political subdivision's jurisdiction that are consistent with federal and state law. This section does not limit the authority of a political subdivision to adopt an ordinance that enforces federal restrictions or to adopt or enforce an ordinance that relates to the operation of a drone by or on behalf of the political subdivision or that is owned by the political subdivision. Any ordinance that violates this section, whether enacted or adopted by a political subdivision before or after the date of enactment of this statute, is null.

Section 7. That a NEW SECTION be added to chapter 50-15:

Takeoff or landing of a drone within a controlled access facility, as defined in § 31-8-1, is prohibited, except by a state agency or state agent.

Takeoff or landing within any other public highway right-of-way is prohibited if the takeoff or landing is performed carelessly or in a manner causing endangerment to any person or property.

A person who violates this section is guilty of a Class 1 misdemeanor.

Section 8. That chapter 50-15 be amended with a NEW SECTION:

Nothing in this chapter may be construed to prohibit the:

(1) Take-off or landing of a drone as deemed reasonable or necessary by private or public entities for emergency or maintenance support functions or services, including the protection and maintenance of public or private critical infrastructure;

(2) Landing of a drone by an operator in compliance with Federal Aviation Administration regulations as deemed reasonable or necessary by the operator in the event of a forced landing or technical malfunction of a drone system;

(3) Take-off or landing of a drone being operated by a sworn public safety officer or other emergency personnel in the performance of the officer or personnel's duties; or

(4) Take-off or landing of a drone owned or operated by the United States government, or any operator under contract with any agency of the United States government, in the performance of the operator's assigned duties.

Section 9. That a NEW SECTION be added to chapter 50-15:

Nothing in this title shall preempt or intrude upon the exclusive sovereignty of airspace of the United States as set forth in 49 U.S.C. § 40103. Any interpretation or application of any provision of this title that contradicts the exclusive authority of the United States government to regulate the operation of a drone in the airspace of the United States, is null.

Signed March 4, 2024

BANKS AND BANKING

Chapter 195

(House Bill 1161)

An Act to regulate the acceptance of a central bank digital currency.

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

Section 1. That chapter 51A-1 be amended with a NEW SECTION:

Neither the state nor any of its agencies or subdivisions may accept a central bank digital currency, whether foreign or domestic, as payment for taxes, fees, tuition, admission, the settlement of any account or debt, or any other purpose.

For the purposes of this chapter, the term "central bank digital currency" means a national digital currency issued by a central bank that is widely available to the general public.

Section 2. That chapter 51A-1 be amended with a NEW SECTION:

A person engaging in the purchase or sale of any goods or services or trading in financial products or services and who accepts central bank digital currency must also accept another form of legal tender.

Signed February 27, 2024

Chapter 196

(Senate Bill 58)

An Act to revise provisions regarding money transmission.

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

Section 1. That chapter 51A-17 be amended with a NEW SECTION:

Terms used in this Act mean:

(1) "Acting in concert," persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement;

(2) "Authorized delegate," a person a licensee designates to engage in money transmission on behalf of the licensee;

(3) "Average daily money transmission liability," the amount of the licensee's outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability under this Act for any licensee required to do so, the given period of time is the quarters ending March thirty-first, June thirtieth, September thirtieth, and

December thirty-first;

(4) "Bank Secrecy Act," the Bank Secrecy Act, 31 U.S.C. § 5311, et seq. and its implementing regulations (January 1, 2024);

(5) "Closed loop stored value," stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value;

(6) "Control:"

(a) The power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee; the power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees; other persons exercising managerial authority of a person in control of a licensee; or the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee;

(b) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or person in control of a licensee. A person presumed to exercise a controlling influence as defined by this section can rebut the presumption of control if the person is a passive investor;

(c) For purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares the person's home;

(7) "Eligible rating," a credit rating of any of the three highest rating categories provided by an eligible rating service, whereby each category may include rating category modifiers, such as "plus" or "minus" for S&P or the equivalent for any other eligible rating service. Long-term credit ratings are deemed eligible if the rating is equal to A- or higher by S&P or the equivalent from any other eligible rating service. Short-term credit ratings are deemed eligible if the rating is equal to or higher than A-2 or SP-2 by S&P or the equivalent from any other eligible rating service. In the event that ratings differ among eligible rating services, the highest rating shall apply when determining whether a security bears an eligible rating;

(8) "Eligible rating service," any nationally recognized statistical rating organization as defined by the U.S. Securities and Exchange Commission, and any other organization designated by the director by rule or order;

(9) "Federally insured depository financial institution," a bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company organized under the laws of the United States or any state of the United States, when the bank, credit union, savings and loan association, trust company, savings association, savings bank, industrial bank, or industrial loan company has federally insured deposits;

(10) "In this state," at a physical location within this state for a transaction requested in person. For a transaction requested electronically or by phone, the provider of money transmission may determine if the person requesting the transaction is "in this state" by relying on other information provided by the person regarding the location of the individual's residential address or a business entity's principal place of business or other physical address location and any records associated with the person that the provider of money transmission may have that indicate the location, including but not limited to an address associated with an account;

(11) "Individual," a natural person;

(12) "Key individual," any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee;

(13) "Licensee," a person licensed under this Act;

(14) "Material litigation," litigation that, according to United States generally accepted accounting principles, is significant to a person's financial health and would be required to be disclosed in the person's annual audited financial statements, report to shareholders, or similar records;

(15) "Money," a medium of exchange that is authorized or adopted by the United States or a foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments. Money does not include any central bank digital currency;

(16) "Monetary value," a medium of exchange, whether or not redeemable in money;

(17) "Money transmission," any of the following:

(a) Selling or issuing payment instruments to a person located in this state;

(b) Selling or issuing stored value to a person located in this state; or

(c) Receiving money for transmission from a person located in this state.

The term includes payroll processing services. The term does not include the provision solely of online or telecommunications services or network access;

(18) "MSB accredited state," a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision;

(19) "Multistate licensing process," any agreement entered into by and among state regulators relating to coordinated processing of applications for money transmission licenses, applications for the acquisition of control of a licensee, control determinations, or notice and information requirements for a change of key individuals;

(20) "NMLS," the Nationwide Multistate Licensing System and Registry developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in financial services industries;

(21) "Outstanding money transmission obligations," must be established and extinguished in accordance with applicable state law and:

(a) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee, or escheated in accordance with applicable abandoned property laws; or

(b) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender, or escheated in accordance with applicable abandoned property laws;

(c) For purposes of this section, "in the United States" shall include, to the extent applicable, a person in any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or a U.S. military installation that is located in a foreign country;

(22) "Passive investor," a person that:

(a) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(b) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(c) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(d) Either attests to (a), (b), and (c) in a form and in a medium prescribed by the director or commits to the passivity characteristics of (a), (b), and (c) in a written document;

(23) "Payment instrument," a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include stored value or any instrument that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value, or is not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program;

(24) "Payroll processing services," receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, make payment of payroll taxes to state and federal agencies, make payments relating to employee benefit plans, or make distributions of other authorized deductions from wages or salaries. The term payroll processing services does not include an employer performing payroll processing services on its own behalf or on behalf of its affiliate or a professional employment organization subject to regulation under other applicable state law;

(25) "Person," any individual, general partnership, limited partnership, limited liability company, corporation, trust, association, joint stock corporation, or other corporate entity identified by the director;

(26) "Receiving money for transmission" or "money received for transmission," receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means;

(27) "Stored value," monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term includes, but is not limited to, "prepaid access" as defined by 31 C.F.R. § 1010.100 (January 1, 2024). Notwithstanding the foregoing, the term "stored value" does not include a payment instrument, closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program; and

(28) "Tangible net worth," the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

Section 2. That chapter 51A-17 be amended with a NEW SECTION:

This Act does not apply to:

(1) An operator of a payment system to the extent that it provides processing, clearing, or settlement services, between or among persons exempted by this section or licensees, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, or similar funds transfers;

(2) A person appointed as an agent of a payee to collect and process a payment from a payor to the payee for goods or services, other than the money transmission itself, provided to the payor by the payee, provided that:

(a) There exists a written agreement between the payee and the agent directing the agent to collect and process payments from payors on the payee's behalf;

(b) The payee holds the agent out to the public as accepting payments for goods or services on the payee's behalf; and

(c) Payment for the goods and services is treated as received by the payee upon receipt by the agent so that the payor's obligation is extinguished and there is no risk of loss to the payor if the agent fails to remit the funds to the payee;

(3) A person that acts as an intermediary by processing payments between an entity that has directly incurred an outstanding money transmission obligation to a sender, and the sender's designated recipient, provided that the entity:

(a) Is properly licensed or exempt from licensing requirements under this Act;

(b) Provides a receipt, electronic record, or other written confirmation to the sender identifying the entity as the provider of money transmission in the transaction; and

(c) Bears sole responsibility to satisfy the outstanding money transmission obligation to the sender, including the obligation to make the sender whole in connection with any failure to transmit the funds to the sender's designated recipient;

(4) The United States, a department, agency, or instrumentality thereof, or its agent;

(5) Money transmission by the United States Postal Service or by an agent of the United States Postal Service;

(6) A state, county, city, or any other governmental agency or governmental subdivision or instrumentality of a state, or its agent;

(7) A federally insured depository financial institution, bank holding company, office of an international banking corporation, foreign bank that establishes a federal branch pursuant to the International Bank Act, 12 U.S.C. § 3102 (January 1, 2024), corporation organized pursuant to the Bank Service Corporation Act, 12 U.S.C. §§ 1861-1867 (January 1, 2024), or corporation organized under the Edge Act, 12 U.S.C. §§ 611-633 (January 1, 2024);

(8) Electronic funds transfer of governmental benefits for a federal, state, county, or governmental agency by a contractor on behalf of the United States or a department, agency, or instrumentality thereof, or on behalf of a state or governmental subdivision, agency, or instrumentality thereof;

(9) A board of trade designated as a contract market under the federal Commodity Exchange Act, 7 U.S.C. §§ 1-25 (January 1, 2024), or a person that, in the ordinary course of business, provides clearance and settlement services for a board of trade to the extent of its operation as or for the board;

(10) A registered futures commission merchant under the federal commodities laws to the extent of its operation as a merchant;

(11) A person registered as a securities broker-dealer under federal or state securities laws to the extent of its operation as a broker-dealer;

(12) An individual employed by a licensee, authorized delegate, or any person exempted from the licensing requirements of this Act when acting within the scope of employment and under the supervision of the licensee, authorized delegate, or exempted person as an employee and not as an independent contractor;

(13) A person expressly appointed as a third-party service provider to or agent of an entity exempt under subdivision (7) of this section, solely to the extent that:

(a) The service provider or agent is engaging in money transmission on behalf of and pursuant to a written agreement with the exempt entity that sets forth the specific functions that the service provider or agent is to perform; and

(b) The exempt entity assumes all risk of loss and all legal responsibility for satisfying the outstanding money transmission obligations owed to purchasers and holders of the outstanding money transmission obligations upon receipt of the purchaser's or holder's money or monetary value by the service provider or agent;

(14) A person exempt by regulation or order if the director finds the exemption to be in the public interest and that the regulation of the person is not necessary for the purposes of this Act;

(15) A South Dakota chartered trust company; and

(16) A person appointed as an agent of a payor for purposes of providing payroll processing services for which the agent would otherwise need to be licensed, provided all of the following apply:

(a) There is a written agreement between the payor and the agent that directs the agent to provide payroll processing services on the payor's behalf;

(b) The payor holds the agent out to employees and other payees as providing payroll processing services on the payor's behalf; and

(c) The payor's obligation to a payee, including an employee or any other party entitled to receive funds via the payroll processing services provided by the agent, shall not be extinguished if the agent fails to remit the funds to the payee.

The director may require that any person claiming to be exempt from licensing pursuant to this section provide information and documentation to the director demonstrating that it qualifies for any claimed exemption.

Section 3. That chapter 51A-17 be amended with a NEW SECTION:

(1) In order to carry out the purposes of this Act, the director may, subject to the provisions of subdivisions (1) and (4) of section 4 of this Act:

(a) Enter into agreements or relationships with other government officials or federal and state regulatory agencies and regulatory associations in order to improve efficiencies and reduce regulatory burden by standardizing methods or procedures, and sharing resources, records, or related information obtained under this Act;

(b) Use, hire, contract, or employ analytical systems, methods, or software to examine or investigate any person subject to this Act;

(c) Accept, from other state or federal government agencies or officials, licensing, examination, or investigation reports made by the other state or federal government agencies or officials; and

(d) Accept audit reports made by an independent certified public accountant or other qualified third-party auditor for an applicant or licensee and incorporate the audit report in any report of examination or investigation.

(2) The director has the broad administrative authority to administer, interpret, and enforce this Act and to recover the cost of administering and enforcing this Act by imposing and collecting proportionate and equitable fees and costs associated with applications, examinations, investigations, and other actions required to achieve the purpose of this Act.

Section 4. That chapter 51A-17 be amended with a NEW SECTION:

(1) Except as otherwise provided in this section, all information or reports obtained by the director from an applicant, licensee, or authorized delegate and all information contained in or related to an examination, investigation, operating report, or condition report prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information are confidential and are not subject to disclosure under this state's open records law.

(2) The director may disclose information not otherwise subject to disclosure under this section to representatives of state or federal agencies who promise in a record that they will maintain the confidentiality of the information or where the director finds that the release is reasonably necessary for the protection and interest of the public in accordance with this state's open records law.

(3) This section does not prohibit the director from disclosing to the public a list of all licensees or the aggregated financial or transactional data concerning those licensees.

(4) Information contained in the records of the division that is not confidential and may be made available to the public either on the division website, upon receipt by the division of a written request, or in NMLS must include:

(a) The name, business address, telephone number, and unique identifier of a licensee;

(b) The business address of a licensee's registered agent for service;

(c) The name, business address, and telephone number of all authorized delegates;

(d) The terms of or a copy of any bond filed by a licensee, provided that confidential information, including, but not limited to, prices and fees for the bond is redacted; and

(e) Copies of any non-confidential final orders of the division relating to any violation of this Act or regulations implementing this Act; and

(f) Imposition of a non-confidential administrative fine or penalty under this Act.

Section 5. That chapter 51A-17 be amended with a NEW SECTION:

(1) The director may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this Act or by a rule adopted or order issued under this Act as reasonably necessary or appropriate to administer and enforce this Act, regulations implementing this chapter, and other applicable law, including the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The director may:

(a) Conduct an examination either on-site or off-site as the director may reasonably require;

(b) Conduct an examination in conjunction with an examination conducted by representatives of other state agencies or agencies of another state or the federal government;

(c) Accept the examination report of another state agency or an agency of another state or the federal government, or a report prepared by an independent accounting firm, which on being accepted is considered for all purposes as an official report of the director; and

(d) Summon and examine under oath a key individual or employee of a licensee or authorized delegate and require the person to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.

(2) A licensee or authorized delegate must provide, and the director must have full and complete access to, all records the director may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the director, provided the director may utilize multistate record production standards and examination procedures when such standards will reasonably achieve the requirements of this section.

(3) Unless otherwise directed by the director, a licensee must pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.

Section 6. That chapter 51A-17 be amended with a NEW SECTION:

(1) To efficiently and effectively administer and enforce this Act and to minimize regulatory burden, the director is authorized and encouraged to participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees that hold licenses in this state and other states. As a participant in multistate supervision, the director may:

(a) Cooperate, coordinate, and share information with other state and federal regulators in accordance with section 4 of this Act;

(b) Enter into written cooperation, coordination, or information-sharing contracts or agreements with organizations the membership of which is made up of state or federal governmental agencies; and

(c) Cooperate, coordinate, and share information with organizations the membership of which is made up of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security of the shared information in accordance with section 4 of this Act.

(2) The director may not waive, and nothing in this section constitutes a waiver of, the director's authority to conduct an examination or investigation or otherwise take independent action authorized by this Act or a rule adopted or order issued under this Act to enforce compliance with applicable state or federal law.

(3) A joint examination or investigation, or acceptance of an examination or investigation report, does not waive an examination assessment provided for in this Act.

Section 7. That chapter 51A-17 be amended with a NEW SECTION:

(1) In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between a provision of this Act and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.

(2) In the event of any inconsistencies between this Act and a federal law that governs pursuant to this section, the director may provide interpretive guidance that:

(a) Identifies the inconsistency; and

(b) Identifies the appropriate means of compliance with federal law.

Section 8. That chapter 51A-17 be amended with a NEW SECTION:

(1) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person is licensed under this Act.

(2) This section does not apply to:

(a) A person that is an authorized delegate of a person licensed under this Act acting within the scope of authority conferred by a written contract with the licensee; or

(b) A person that is exempt pursuant to section 2 of this Act and does not engage in money transmission outside the scope of such exemption.

(3) A license issued under sections 13 through 18 of this Act, inclusive, is not transferable or assignable.

Section 9. That chapter 51A-17 be amended with a NEW SECTION:

(1) To establish consistent licensing between this state and other states, the director is authorized and encouraged to:

(a) Implement all licensing provisions of this Act in a manner that is consistent with other states that have adopted this Act or multistate licensing processes; and

(b) Participate in nationwide protocols for licensing cooperation and coordination among state regulators provided that such protocols are consistent with this Act.

(2) In order to fulfill the purposes of this Act, the director is authorized and encouraged to establish relationships or contracts with NMLS or other entities designated by NMLS to enable the director to:

(a) Collect and maintain records;

(b) Coordinate multistate licensing processes and supervision processes;

(c) Process fees; and

(d) Facilitate communication between the division and licensees or other persons subject to this Act.

(3) The director is authorized and encouraged to utilize NMLS for all aspects of licensing in accordance with this Act, including, but not limited to, license applications, applications for acquisitions of control, surety bonds, reporting, criminal history background checks, credit checks, fee processing, and examinations.

(4) The director is authorized and encouraged to utilize NMLS forms, processes, and functionalities in accordance with this Act. In the event NMLS does not provide functionality, forms, or processes for a provision of this Act, the director is authorized and encouraged to strive to implement the requirements in a manner that facilitates uniformity with respect to licensing, supervision, reporting, and regulation of licensees which are licensed in multiple jurisdictions.

(5) For the purpose of participating in the Nationwide Multistate Licensing System and Registry, the director is authorized to waive or modify, in whole or in part, by rule, regulation or order, any or all of the requirements and to establish new requirements as reasonably necessary to participate

in the Nationwide Multistate Licensing System and Registry.

Section 10. That chapter 51A-17 be amended with a NEW SECTION:

(1) Applicants for a license must apply in a form and in a medium as prescribed by the director. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the director and may be changed or updated by the director in accordance with applicable law in order to carry out the purposes of this Act and maintain consistency with NMLS licensing standards and practices. The application must state or contain, as applicable:

(a) The legal name and residential and business addresses of the applicant and any fictitious or trade name used by the applicant in conducting its business;

(b) A list of any criminal convictions of the applicant and any material litigation in which the applicant has been involved in the ten-year period next preceding the submission of the application;

(c) A description of any money transmission previously provided by the applicant and the money transmission that the applicant seeks to provide in this state;

(d) A list of the applicant's proposed authorized delegates and the locations in this state where the applicant and its authorized delegates propose to engage in money transmission;

(e) A list of other states in which the applicant is licensed to engage in money transmission and any license revocations, suspensions, or other disciplinary action taken against the applicant in another state;

(f) Information concerning any bankruptcy or receivership proceedings affecting the licensee or a person in control of a licensee;

(g) A sample form of contract for authorized delegates, if applicable;

(h) A sample form of payment instrument or stored value, as applicable;

(i) The name and address of any federally insured depository financial institution through which the applicant plans to conduct money transmission; and

(j) Any other information the director or NMLS reasonably requires with respect to the applicant.

(2) If an applicant is a corporation, limited liability company, partnership, or other legal entity, the applicant must also provide:

(a) The date of the applicant's incorporation or formation and state or country of incorporation or formation;

(b) If applicable, a certificate of good standing from the state or country in which the applicant is incorporated or formed;

(c) A brief description of the structure or organization of the applicant, including any parents or subsidiaries of the applicant, and whether any parents or subsidiaries are publicly traded;

(d) The legal name, any fictitious or trade name, all business and residential addresses, and the employment, as applicable, in the

ten-year period next preceding the submission of the application of each key individual and person in control of the applicant;

(e) A list of any criminal convictions and material litigation in which a person in control of the applicant that is not an individual has been involved in the ten-year period preceding the submission of the application;

(f) A copy of audited financial statements of the applicant for the most recent fiscal year and for the two-year period next preceding the submission of the application or, if determined to be acceptable to the director, certified unaudited financial statements for the most recent fiscal year or other period acceptable to the director;

(g) A certified copy of unaudited financial statements of the applicant for the most recent fiscal quarter;

(h) If the applicant is a publicly traded corporation, a copy of the most recent report filed with the United States Securities and Exchange Commission under Section 13 of the federal Securities Exchange Act of 1934, 15 U.S.C. § 78m (January 1, 2024);

(i) If the applicant is a wholly owned subsidiary of a corporation publicly traded in the United States, a copy of audited financial statements for the parent corporation for the most recent fiscal year or a copy of the parent corporation's most recent report filed under Section 13 of the U.S. Securities Exchange Act of 1934, 15 U.S.C. § 78m (January 1, 2024) or for a corporation publicly traded outside the United States, a copy of similar documentation filed with the regulator of the parent corporation's domicile outside the United States;

(j) The name and address of the applicant's registered agent in this state; and

(k) Any other information the director reasonably requires with respect to the applicant.

(3) Each application must be accompanied by a nonrefundable application fee not to exceed five hundred dollars and a license fee not to exceed one thousand dollars. The license fee must be refunded if the application is denied. The director shall establish the application and license fees by rules promulgated pursuant to chapter 1-26.

(4) The director may waive one or more requirements of this section or permit an applicant to submit other information in lieu of the required information.

Section 11. That chapter 51A-17 be amended with a NEW SECTION:

Any individual in control of a licensee or applicant or any individual that seeks to acquire control of a licensee, or each key individual must furnish to the director through NMLS the following items:

(1) The individual's fingerprints for submission to the Federal Bureau of Investigation and the director for purposes of a national criminal history background check, unless the person currently resides outside of the United States and has resided outside of the United States for the last ten years; and

(2) Personal history and experience in a form and in a medium prescribed by the director to obtain the following:

(a) An independent credit report from a consumer reporting agency unless the individual does not have a Social Security number, in which case, this requirement shall be waived;

(b) Information related to any criminal convictions or pending charges; and

(c) Information related to any regulatory or administrative action and any civil litigation involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty, or breach of contract.

Section 12. That chapter 51A-17 be amended with a NEW SECTION:

If any individual in control of a licensee or applicant or any individual that seeks to acquire control of a licensee or each key individual has resided outside of the United States at any time in the last ten years, the individual must also provide an investigative background report prepared by an independent search firm that meets the following requirements:

(1) At a minimum, the search firm shall:

(a) Demonstrate that the search firm has sufficient knowledge, resources, and employs accepted and reasonable methodologies to conduct the research of the background report; and

(b) Not be affiliated with or have an interest with the individual the search firm is researching, and

(2) At a minimum, the investigative background report must be written in the English language and must contain the following:

(a) If available in the individual's current jurisdiction of residency, a comprehensive credit report or any equivalent information obtained or generated by the independent search firm to accomplish the report, including a search of the court data in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(b) Criminal records information for the past ten years, including, but not limited to, felonies, misdemeanors, or similar convictions for violations of law in the countries, provinces, states, cities, towns, and contiguous areas where the individual resided and worked;

(c) Employment history;

(d) Media history, including an electronic search of national and local publications, wire services, and business applications; and

(e) Financial services-related regulatory history, including but not limited to, money transmission, securities, banking, insurance, and mortgage-related industries.

Section 13. That chapter 51A-17 be amended with a NEW SECTION:

When an application for an original license under this Act appears to include all the items and addresses all of the matters that are required, the application is complete, and the director must promptly notify the applicant in a record of the date on which the application is determined to be complete.

(1) The director must approve or deny the application within one hundred twenty days after the completion date; or

(2) If the application is not approved or denied within one hundred twenty days after the completion date:

(a) The application is approved; and

(b) The license takes effect as of the first business day after expiration of the one hundred twenty-day period.

(c) The director may for good cause extend the application period.

Section 14. That chapter 51A-17 be amended with a NEW SECTION:

A determination by the director that an application is complete and is accepted for processing means only that the application, on its face, appears to include all of the items, including the criminal background check response from the FBI, addresses all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

Section 15. That chapter 51A-17 be amended with a NEW SECTION:

When an application is filed and considered complete under sections 13 and 14 of this Act, the director must investigate the applicant's financial condition and responsibility, financial and business experience, character, and general fitness. The director may conduct an on-site investigation of the applicant, the reasonable cost of which the applicant must pay. The director must issue a license to an applicant under sections 13 to 18, inclusive, of this Act, if the director finds that all of the following conditions have been fulfilled:

(1) The applicant has complied with sections 10 to 12, inclusive, of this Act; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the applicant; and the competence, experience, character, and general fitness of the key individuals and persons in control of the applicant indicate that it is in the interest of the public to permit the applicant to engage in money transmission.

Section 16. That chapter 51A-17 be amended with a NEW SECTION:

If an applicant avails itself or is otherwise subject to a multistate licensing process:

(1) The director is authorized and encouraged to accept the investigation results of a lead investigative state for the purpose of section 15 of this Act if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If the division is a lead investigative state, the director is authorized and encouraged to investigate the applicant pursuant to section 15 of this Act and the timeframes established by agreement through the multistate licensing process, provided, however, that in no case shall such a timeframe be noncompliant with the application period in section 13 of this Act.

Section 17. That chapter 51A-17 be amended with a NEW SECTION:

The director shall issue a formal written notice of the denial of a license

application within thirty days of the decision to deny the application. The director shall set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the director under this section may appeal within thirty days after receipt of the written notice of the denial pursuant to chapter 1-26.

Section 18. That chapter 51A-17 be amended with a NEW SECTION:

The initial license term begins on the day the application is approved. The license shall expire on December thirty-first of the year in which the license term began, unless the initial license date is between November first and December thirty-first, in which instance the initial license term runs through December thirty-first of the following year.

Section 19. That chapter 51A-17 be amended with a NEW SECTION:

(1) A license under this Act shall be renewed annually.

(a) The director shall establish an annual renewal fee, not to exceed one thousand dollars, by rule promulgated pursuant to chapter 1-26.

(b) The annual renewal fee must be paid no more than sixty days before the license expiration.

(c) The renewal term shall be for a period of one year and shall begin on January first of each year after the initial license term and shall expire on December thirty-first of the year the renewal term begins.

(2) A licensee shall submit a renewal report with the renewal fee in a form and in a medium prescribed by the director. The renewal report must state or contain a description of each material change in information submitted by the licensee in its original license application which has not been reported to the director.

(3) The director for good cause may grant an extension of the renewal date.

(4) The director is authorized and encouraged to utilize NMLS to process license renewals provided that such functionality is consistent with this section.

Section 20. That chapter 51A-17 be amended with a NEW SECTION:

Maintenance of License.

(1) If a licensee does not continue to meet the qualifications or satisfy the requirements that apply to an applicant for a new money transmission license, the director may suspend or revoke the licensee's license in accordance with the procedures established by this Act or other applicable state law for the suspension or revocation.

(2) An applicant for a money transmission license must demonstrate that it meets or will meet, and a money transmission licensee must at all times meet, the requirements in sections 48 to 50, inclusive, of this Act.

Section 21. That chapter 51A-17 be amended with a NEW SECTION:

(1) Any person, or group of persons acting in concert, seeking to acquire control of a licensee must obtain the written approval of the director prior to acquiring control. An individual is not deemed to acquire control of a licensee and is not subject to these acquisition of control provisions when

that individual becomes a key individual in the ordinary course of business.

(2) A person, or group of persons acting in concert, seeking to acquire control of a licensee must, in cooperation with the licensee:

(a) Submit an application in a form and in a medium prescribed by the director; and

(b) Submit a nonrefundable fee not to exceed one thousand dollars. The director shall establish the fee by rule promulgated pursuant to chapter 1-26.

(3) Upon request, the director may permit a licensee or the person, or group of persons acting in concert, to submit some or all information required by the director pursuant to this section without using NMLS.

(4) The application required by this section shall include information required by sections 11 and 12 of this Act for any new key individuals that have not previously completed the requirements of sections 11 and 12 of this Act for a licensee.

Section 22. That chapter 51A-17 be amended with a NEW SECTION:

When an application for acquisition of control under section 21 of this Act appears to include all the items and address all of the matters that are required, the application shall be considered complete and the director shall promptly notify the applicant in a record of the date on which the application was determined to be complete and:

(1) The director shall approve or deny the application within sixty days after the completion date; or

(2) If the application is not approved or denied within sixty days after the completion date:

(a) The application is approved; and

(b) The person, or group of persons acting in concert, are not prohibited from acquiring control.

(3) The director may for good cause extend the application period.

Section 23. That chapter 51A-17 be amended with a NEW SECTION:

A determination by the director that an application for acquisition of control under section 21 of this Act is complete and is accepted for processing means only that the application, on its face, appears to include all of the items and address all of the matters that are required, and is not an assessment of the substance of the application or of the sufficiency of the information provided.

Section 24. That chapter 51A-17 be amended with a NEW SECTION:

When an application for acquisition of control under section 21 of this Act is filed and considered complete under section 22 of this Act, the director must investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control. The director shall approve an acquisition of control pursuant to this section 21 of this Act if the director finds that all of the following conditions have been fulfilled:

(1) The requirements of subdivisions (2) and (4) of section 21 of this Act have been met, as applicable; and

(2) The financial condition and responsibility, financial and business experience, competence, character, and general fitness of the person, or group of persons acting in concert, seeking to acquire control; and the competence, experience, character, and general fitness of the key individuals and persons that would be in control of the licensee after the acquisition of control indicate that it is in the interest of the public to permit the person, or group of persons acting in concert, to control the licensee.

Section 25. That chapter 51A-17 be amended with a NEW SECTION:

If an applicant for acquisition of control under this section 21 of this Act avails itself or is otherwise subject to a multistate licensing process:

(1) The director is authorized and encouraged to accept the investigation results of a lead investigative state for the purpose of section 22 of this Act if the lead investigative state has sufficient staffing, expertise, and minimum standards; or

(2) If this state is a lead investigative state, the director is authorized and encouraged to investigate the applicant pursuant to section 22 of this Act and the timeframes established by agreement through the multistate licensing process.

Section 26. That chapter 51A-17 be amended with a NEW SECTION:

The director shall issue a formal written notice of the denial of an application to acquire control within thirty days of the decision to deny the application. The director must set forth in the notice of denial the specific reasons for the denial of the application. An applicant whose application is denied by the director under this section may appeal within thirty days after receipt of the written notice of the denial pursuant to chapter 1-26.

Section 27. That chapter 51A-17 be amended with a NEW SECTION:

The requirements of subdivisions (1) and (2) of section 21 of this Act do not apply to any of the following:

(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the shareholders or holders of voting shares or voting interests of a licensee or a person in control of a licensee;

(2) A person that acquires control of a licensee by devise or descent;

(3) A person that acquires control of a licensee as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law;

(4) A person that is exempt under subdivision (7) of section 2 of this Act;

(5) A person that the director determines is not subject to subdivision (1) of section 21 of this Act based on the public interest;

(6) A public offering of securities of a licensee or a person in control of a licensee; or

(7) An internal reorganization of a person in control of the licensee where the ultimate person in control of the licensee remains the same.

Section 28. That chapter 51A-17 be amended with a NEW SECTION:

Persons in section 27 of this Act in cooperation with the licensee shall notify the director within fifteen days after the acquisition of control.

Section 29. That chapter 51A-17 be amended with a NEW SECTION:

(1) The requirements in subdivisions (1) and (2) of section 21 of this Act do not apply to a person that has complied with and received approval to engage in money transmission under this Act or was identified as a person in control in a prior application filed with and approved by the director or by an MSB accredited state pursuant to a multistate licensing process, provided that:

(a) The person has not had a license revoked or suspended or controlled a licensee that has had a license revoked or suspended while the person was in control of the licensee in the previous five years;

(b) If the person is a licensee, the person is well managed and has received at least a satisfactory rating for compliance at its most recent examination by an MSB accredited state if such rating was given;

(c) The licensee to be acquired is projected to meet the requirements of sections 48 to 50, inclusive, of this Act after the acquisition of control is completed, and if the person acquiring control is a licensee, that licensee is also projected to meet the requirements of sections 49 to 51, inclusive, of this Act after the acquisition of control is completed;

(d) The licensee to be acquired will not implement any material changes to its business plan as a result of the acquisition of control, and if the person acquiring control is a licensee, that licensee also will not implement any material changes to its business plan as a result of the acquisition of control; and

(e) The person provides notice of the acquisition in cooperation with the licensee and attests to subsections (a) through (d) in this section in a form and in a medium prescribed by the director.

(2) If the notice is not disapproved within thirty days after the date on which the notice was determined to be complete, the notice is deemed approved.

Section 30. That chapter 51A-17 be amended with a NEW SECTION:

Before filing an application for approval to acquire control of a licensee a person may request in writing a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the proposed person and transaction is not subject to the requirements of subdivisions (1) and (2) of section 21 of this Act.

Section 31. That chapter 51A-17 be amended with a NEW SECTION:

If a multistate licensing process includes a determination pursuant to section 30 of this Act and an applicant avails itself or is otherwise subject to the multistate licensing process:

(1) The director is authorized and encouraged to accept the control determination of a lead investigative state with sufficient staffing,

expertise, and minimum standards for the purpose of section 30 of this Act; or

(2) If this state is a lead investigative state, the director is authorized and encouraged to investigate the applicant pursuant to section 30 of this Act and the timeframes established by agreement through the multistate licensing process.

Section 32. That chapter 51A-17 be amended with a NEW SECTION:

(1) A licensee adding or replacing any key individual must:

(a) Provide notice in a manner prescribed by the director within fifteen days after the effective date of the key individual's appointment; and

(b) Provide information as required by sections 11 and 12 of this Act within forty-five days of the effective date.

(2) Within ninety days of the date on which the notice provided pursuant to this section was determined to be complete, the director may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee.

(3) A notice of disapproval must contain a statement of the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval pursuant chapter 1-26 within thirty days of receipt of such notice of disapproval.

(4) If the notice provided pursuant to this section is not disapproved within ninety days after the date on which the notice was determined to be complete, the key individual is deemed approved.

(5) If a multistate licensing process includes a key individual notice review and disapproval process pursuant to this section and the licensee avails itself or is otherwise subject to the multistate licensing process:

(a) The director is authorized and encouraged to accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purpose of this section; or

(b) If this state is a lead investigative state, the director is authorized and encouraged to investigate the applicant pursuant to this section and the timeframes established by agreement through the multistate licensing process.

Section 33. That chapter 51A-17 be amended with a NEW SECTION:

(1) Each licensee must submit a report of condition within forty-five days of the end of the calendar quarter, or within any extended time as the director may prescribe.

(2) The report of condition must include:

(a) Financial information at the licensee level;

(b) Nationwide and state-specific money transmission transaction information in every jurisdiction in the United States where the licensee is licensed to engage in money transmission;

(c) Permissible investments report;

(d) Transaction destination country reporting for money received for transmission, if applicable; and

(e) Any other information the director reasonably requires with respect to the licensee. The director is authorized and encouraged to utilize NMLS for the submission of the report required by subdivision (1) of this section and is authorized to change or update as necessary the requirements of this section to carry out the purposes of this Act and maintain consistency with NMLS reporting.

(3) The information required by subsection 2(d) of this section shall only be included in a report of condition submitted within forty-five days of the end of the fourth calendar quarter.

Section 34. That chapter 51A-17 be amended with a NEW SECTION:

(1) Each licensee shall, within ninety days after the end of each fiscal year, or within any extended time as the director may prescribe, file with the director:

(a) An audited financial statement of the licensee for the fiscal year prepared in accordance with United States generally accepted accounting principles; and

(b) Any other information as the director may reasonably require.

(2) The audited financial statements shall be prepared by an independent certified public accountant or independent public accountant who is satisfactory to the director.

(3) The audited financial statements shall include or be accompanied by a certificate of opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the director. If the certificate of opinion is qualified, the director may order the licensee to take any action as the director may find necessary to enable the independent or certified public accountant or independent public accountant to remove the qualification.

Section 35. That chapter 51A-17 be amended with a NEW SECTION:

(1) Each licensee must submit a report of authorized delegates within forty-five days of the end of the calendar quarter. The director is authorized and encouraged to utilize NMLS for the submission of the report required by this section provided that such functionality is consistent with the requirements of this section.

(2) The authorized delegate report must include, at a minimum, each authorized delegate's:

(a) Company legal name;

(b) Taxpayer employer identification number;

(c) Principal provider identifier;

(d) Physical address;

(e) Mailing address;

(f) Any business conducted in other states;

(g) Any fictitious or trade name;

(h) Contact person name, phone number, and email;

(i) Start date as licensee's authorized delegate;

(j) End date acting as licensee's authorized delegate, if applicable;

(k) Court orders pursuant to section 41 of this Act; and

(l) Any other information the director reasonably requires with respect to the authorized delegate.

Section 36. That chapter 51A-17 be amended with a NEW SECTION:

(1) A licensee must file a report with the director within one business day after the licensee has reason to know of the occurrence of any of the following events:

(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. § 101-110 (January 1, 2024) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors; or

(c) The commencement of a proceeding to revoke or suspend its license in a state or country in which the licensee engages in business or is licensed.

(2) A licensee must file a report with the director within three business day after the licensee has reason to know of the occurrence of any of the following events:

(a) A charge or conviction of the licensee or of a key individual or person in control of the licensee for a felony; or

(b) A charge or conviction of an authorized delegate for a felony.

Section 37. That chapter 51A-17 be amended with a NEW SECTION:

A licensee and its authorized delegates must file all reports required by federal currency reporting, record keeping, and suspicious activity reporting requirements as set forth in the Bank Secrecy Act and other federal and state laws pertaining to money laundering. The timely filing of a complete and accurate report required under this section with the appropriate federal agency is deemed compliant with the requirements of this section.

Section 38. That chapter 51A-17 be amended with a NEW SECTION:

(1) Licensee shall maintain the following records, for determining its compliance with this Act for at least three years:

(a) A record of each outstanding money transmission obligation sold;

(b) A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;

(c) Bank statements and bank reconciliation records;

(d) Records of outstanding money transmission obligations;

(e) Records of each outstanding money transmission obligation paid within the three-year period;

(f) A list of the last known names and addresses of all of the licensee's authorized delegates; and

(g) Any other records the director reasonably requires by rule.

(2) The items specified in subdivision (1) of this section may be maintained in any form of record.

(3) Records specified in subdivision (1) of this section may be maintained outside this state if the records are made accessible to the director on seven business-days' notice that is sent in a record.

(4) All records maintained by the licensee as required in this section are open to inspection by the director pursuant to subdivision (1) of section 5 of this Act.

Section 39. That chapter 51A-17 be amended with a NEW SECTION:

(1) In this section, "remit" means to make direct payments of money to a licensee or its representative authorized to receive money or to deposit money in a bank in an account specified by the licensee.

(2) Before a licensee is authorized to conduct business through an authorized delegate or allows a person to act as the licensee's authorized delegate, the licensee must:

(a) Adopt, and update as necessary, written policies and procedures reasonably designed to ensure that the licensee's authorized delegates comply with applicable state and federal law;

(b) Enter into a written contract that complies with subdivision (4) of this section; and

(c) Conduct a reasonable risk-based background investigation sufficient for the licensee to determine whether the authorized delegate has complied and will likely comply with applicable state and federal law.

(3) An authorized delegate must operate in full compliance with this Act.

(4) The written contract required by subdivision (2) of this section must be signed by the licensee and the authorized delegate and, at a minimum, must:

(a) Appoint the person signing the contract as the licensee's authorized delegate with the authority to conduct money transmission on behalf of the licensee;

(b) Set forth the nature and scope of the relationship between the licensee and the authorized delegate and the respective rights and responsibilities of the parties;

(c) Require the authorized delegate to agree to fully comply with all applicable state and federal laws, rules, and regulations pertaining to money transmission, including this Act and regulations implementing this Act, relevant provisions of the Bank Secrecy Act and the other federal and state laws pertaining to money laundering;

(d) Require the authorized delegate to remit and handle money and monetary value in accordance with the terms of the contract between the licensee and the authorized delegate;

(e) Impose a trust on money and monetary value net of fees received for money transmission for the benefit of the licensee;

(f) Require the authorized delegate to prepare and maintain records as required by this Act or regulations implementing this Act, or as reasonably requested by the director;

(g) Acknowledge that the authorized delegate consents to examination or investigation by the director;

(h) State that the licensee is subject to regulation by the director and that, as part of that regulation, the director may suspend or revoke an authorized delegate designation or require the licensee to terminate an authorized delegate designation; and

(i) Acknowledge receipt of the written policies and procedures required under subsection 2(a) of this section.

(5) If the licensee's license is suspended, revoked, surrendered, or expired, the licensee must, within five business days, provide documentation to the director that the licensee has notified all applicable authorized delegates of the licensee whose names are in a record filed with the director of the suspension, revocation, surrender, or expiration of a license. Upon suspension, revocation, surrender, or expiration of a license, applicable authorized delegates shall immediately cease to provide money transmission as an authorized delegate of the licensee.

(6) An authorized delegate of a licensee holds in trust for the benefit of the licensee all money net of fees received from money transmission. If any authorized delegate commingles any funds received from money transmission with any other funds or property owned or controlled by the authorized delegate, all commingled funds and other property shall be considered held in trust in favor of the licensee in an amount equal to the amount of money net of fees received from money transmission.

(7) An authorized delegate may not use a subdelegate to conduct money transmission on behalf of a licensee.

Section 40. That chapter 51A-17 be amended with a NEW SECTION:

A person shall not engage in the business of money transmission on behalf of a person not licensed under this Act or not exempt pursuant to section 2 of this Act. A person that engages in such activity, provides money transmission to the same extent as if the person were a licensee, shall be jointly and severally liable with the unlicensed or nonexempt person.

Section 41. That chapter 51A-17 be amended with a NEW SECTION:

(1) The circuit court in an action brought by a licensee shall have jurisdiction to grant appropriate equitable or legal relief, including without limitation prohibiting the authorized delegate from directly or indirectly acting as an authorized delegate for any licensee in this state and the payment of restitution, damages, or other monetary relief if the circuit court finds that an authorized delegate failed to remit money in accordance with the written contract required by subdivision (2) of section 39 of this Act or as otherwise directed by the licensee or required by law.

(2) If the circuit court issues an order prohibiting a person from acting as an authorized delegate for any licensee pursuant to subdivision (1) of this section, the licensee that brought the action must report the order to the director within thirty days and must report the order through NMLS within ninety days.

(3) An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit more than two thousand, five hundred dollars of such money is guilty of a Class 6 felony.

(4) An authorized delegate who holds money in trust for the benefit of a licensee and knowingly fails to remit no more than two thousand, five hundred dollars of such money is guilty of a Class 1 misdemeanor.

Section 42. That chapter 51A-17 be amended with a NEW SECTION:

(1) Every licensee shall forward all money received for transmission in accordance with the terms of the agreement between the licensee and the sender unless the licensee has a reasonable belief or a reasonable basis to believe that the sender may be a victim of fraud or that a crime or violation of law, rule, or regulation has occurred, is occurring, or may occur.

(2) If a licensee fails to forward money received for transmission in accordance with this section, the licensee must respond to inquiries by the sender with the reason for the failure unless providing a response would violate a state or federal law, rule, or regulation.

Section 43. That chapter 51A-17 be amended with a NEW SECTION:

(1) This section does not apply to:

(a) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. § 1005.30 to § 1005.36, inclusive (January 1, 2024); or

(b) Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee.

(2) Every licensee shall refund to the sender within ten days of receipt of the sender's written request for a refund of any and all money received for transmission unless any of the following occurs:

(a) The money has been forwarded within ten days of the date on which the money was received for transmission;

(b) Instructions have been given committing an equivalent amount of money to the person designated by the sender within ten days of the date on which the money was received for transmission;

(c) The agreement between the licensee and the sender instructs the licensee to forward the money at a time that is beyond ten days of the date on which the money was received for transmission. If funds have not yet been forwarded in accordance with the terms of the agreement between the licensee and the sender, the licensee shall issue a refund in accordance with the other provisions of this section; or

(d) The refund is requested for a transaction that the licensee has not completed based on a reasonable belief or a reasonable basis to believe that a crime or violation of law, rule, or regulation has

occurred, is occurring, or may occur.

(e) The refund request does not enable the licensee to identify the sender's name and address or telephone number or identify the particular transaction to be refunded in the event the sender has multiple transactions outstanding.

Section 44. That chapter 51A-17 be amended with a NEW SECTION:

(1) Section 45 does not apply to:

(a) Money received for transmission subject to the federal Remittance Rule, 12 C.F.R. Part 1005 Subpart B (January 1, 2024);

(b) Money received for transmission that is not primarily for personal, family, or household purposes;

(c) Money received for transmission pursuant to a written agreement between the licensee and payee to process payments for goods or services provided by the payee; or

(d) Payroll processing services.

(2) For purposes of this Act, the term "receipt" means a paper receipt, electronic record, or other written confirmation. For a transaction conducted in person, the receipt may be provided electronically if the sender requests or agrees to receive an electronic receipt. For a transaction conducted electronically or by phone, a receipt may be provided electronically. All electronic receipts shall be provided in a retainable form.

Section 45. That chapter 51A-17 be amended with a NEW SECTION:

Every licensee or its authorized delegate shall provide the sender a receipt for money received for transmission.

(1) The receipt shall contain the following information, as applicable:

(a) The name of the sender;

(b) The name of the designated recipient;

(c) The date of the transaction;

(d) The unique transaction or identification number;

(e) The name of the licensee, NMLS Unique ID, the licensee's business address, and the licensee's customer service telephone number;

(f) The amount of the transaction in United States dollars;

(g) Any fee charged by the licensee to the sender for the transaction; and

(h) Any taxes collected by the licensee from the sender for the transaction.

(2) The receipt required by this section must be in English and in the language principally used by the licensee or authorized delegate to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, if other than English.

Section 46. That chapter 51A-17 be amended with a NEW SECTION:

In addition to the contact information required in subsection (1)(e) of section 45 of this Act, every licensee or authorized delegate must include on a receipt or disclose on the licensee's website or mobile application the name and phone number of the division and a statement that the licensee's customers can contact the division with questions or complaints about the licensee's money transmission services.

Section 47. That chapter 51A-17 be amended with a NEW SECTION:

(1) A licensee that provides payroll processing services must:

(a) Issue reports to clients detailing client payroll obligations in advance of the payroll funds being deducted from an account; and

(b) Make available worker paystubs or an equivalent statement to workers.

(2) Subdivision (1) of this section does not apply to a licensee providing payroll processing services where the licensee's client designates the intended recipients to the licensee and is responsible for providing the disclosures required by subsection 1(b) of this section.

Section 48. That chapter 51A-17 be amended with a NEW SECTION:

(1) A licensee under this chapter must maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets for one hundred million dollars to one billion dollars, and one-half of one percent of additional assets over one billion dollars.

(2) Tangible net worth must be demonstrated at initial application by the applicant's most recent audited or unaudited financial statements pursuant to subsection 10(2)(f) of this Act.

(3) Notwithstanding the foregoing provisions of this section, the director shall have the authority, for good cause shown, to exempt, in-part or in whole, from the requirements of this section any applicant or licensee.

Section 49. That chapter 51A-17 be amended with a NEW SECTION:

(1) An applicant for a money transmission license must provide, and a licensee at all times must maintain, security consisting of a surety bond in a form satisfactory to the director or, with the director's approval, a deposit instead of a bond in accordance with this section.

(2) The amount of the required security shall be:

(a) The greater of one hundred thousand dollars or an amount equal to one hundred percent of the licensee's average daily money transmission liability in this state calculated for the most recently completed three-month period, up to a maximum of five hundred thousand dollars; or

(b) In the event that the licensee's tangible net worth exceeds ten percent of total assets, the licensee shall maintain a surety bond of one hundred thousand dollars.

(3) A licensee that maintains a bond in the maximum amount provided for in subsection 2(a) or (b) of this section, as applicable, shall not be required

to calculate its average daily money transmission liability in this state for purposes of this section.

(4) A licensee may exceed the maximum required bond amount pursuant to subdivision (5) of section 51 of this Act.

Section 50. That chapter 51A-17 be amended with a NEW SECTION:

(1) A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.

(2) Except for permissible investments enumerated in section 51 of this Act, the director, with respect to any licensee, may by rule or order limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.

(3) Permissible investments, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. § 101 to 110 (January 1, 2024) for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.

(4) Upon the establishment of a statutory trust in accordance with subdivision (3) of this section or when any funds are drawn on a letter of credit pursuant to subdivision (4) of section 51 of this Act, the director shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice shall be deemed satisfied if performed pursuant to a multistate agreement or through NMLS. Funds drawn on a letter of credit, and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state, and other states, as applicable. Any statutory trust established hereunder shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.

(5) The director, by rule or by order, may allow other types of investments that the director determines are of sufficient liquidity and quality to be a permissible investment. The director is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.

Section 51. That chapter 51A-17 be amended with a NEW SECTION:

The following investments are permissible under section 50 of this Act:

(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally-insured depository financial institution, and cash equivalents, including ACH items in transit to the licensee and ACH items or international wires in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee-owned locations, debit card or credit card-funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by S&P, or the equivalent from any eligible rating service;

(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813 (January 1, 2024) or as defined under the federal Credit Union Act, 12 U.S.C. § 1781 (January 1, 2024);

(3) An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;

(4) The full drawable amount of an irrevocable standby letter of credit for which the stated beneficiary is the director that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by section 54 of this Act; and

(5) One hundred percent of the surety bond or deposit provided for under section 49 of this Act that exceeds the average daily money transmission liability in this state.

Section 52. That chapter 51A-17 be amended with a NEW SECTION:

The letter of credit referenced in subdivision (4) of section 51 of this Act must:

(1) Be issued by a federally-insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that bears an eligible rating or whose parent company bears an eligible rating and is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies;

(2) Be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit;

(3) Not contain reference to any other agreements, documents or entities, or otherwise provide for any security interest in the licensee; and

(4) Contain an issue date and expiration date, and expressly provide for automatic extension, without a written amendment, for an additional period of one year from the present or each future expiration date, unless the issuer of the letter of credit notifies the director in writing by certified or registered mail or courier mail or other receipted means, at least sixty days prior to any expiration date, that the irrevocable letter of credit will not be extended.

Section 53. That chapter 51A-17 be amended with a NEW SECTION:

In the event of any notice of expiration or non-extension of a letter of

credit issued under subdivision (4) of section 51 of this Act, the licensee shall be required to demonstrate to the satisfaction of the director, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with subdivision (1) of section 50 of this Act upon the expiration of the letter of credit. If the licensee is not able to do so, the director may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with subdivision (1) of section 50 of this Act. Any such draw shall be offset against the licensee's outstanding money transmission obligations. The drawn funds shall be held in trust by the director or the director's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.

Section 54. That chapter 51A-17 be amended with a NEW SECTION:

The letter of credit referenced in subdivision (4) of section 51 of this Act shall provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:

(1) The original letter of credit, including any amendments; and

(2) A written statement from the beneficiary stating that any of the following events have occurred:

(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. § 101 to 110 (January 1, 2024) for bankruptcy or reorganization;

(b) The filing of a petition by or against the licensee for receivership or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;

(c) The seizure of assets of a licensee by a director pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or

(d) The beneficiary has received notice of expiration or non-extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with subdivision (1) of section 50 of this Act upon the expiration or non-extension of the letter of credit.

Section 55. That chapter 51A-17 be amended with a NEW SECTION:

The director may designate an agent to serve on the director's behalf as beneficiary to a letter of credit so long as the agent and letter of credit meet requirements established by the director. The director's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of this subdivision (4) of section 51 of this Act are assigned to the director.

Section 56. That chapter 51A-17 be amended with a NEW SECTION:

The director is authorized and encouraged to participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including, but not limited to, services provided by the NMLS and State Regulatory Registry, LLC.

Section 57. That chapter 51A-17 be amended with a NEW SECTION:

Unless permitted by the director, by rule or by order, to exceed the limit as set forth herein, the following investments are permissible under section 50 of this Act to the extent specified:

(1) Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments;

(2) Of the receivables permissible under subdivision (1) of this section, receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value of the licensee's total permissible investments;

(3) The following investments are permissible up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:

(a) A short-term investment, an investment lasting up to six months, bearing an eligible rating;

(b) Commercial paper bearing an eligible rating;

(c) A bill, note, bond, or debenture bearing an eligible rating;

(d) U.S. tri-party repurchase agreements collateralized at one hundred percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;

(e) Money market mutual funds rated less than "AAA" and equal to or higher than "A-" by S&P or the equivalent from any other eligible rating service; and

(f) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments listed in subdivisions (1) to (3), inclusive, of section 51 of this Act;

(4) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination and the foreign depository institution:

(a) Has an eligible rating;

(b) Is registered under the Foreign Account Tax Compliance Act;

(c) Is not located in any country subject to sanctions from the Office of Foreign Asset Control; and

(d) Is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.

Section 58. That chapter 51A-17 be amended with a NEW SECTION:

A licensee transmitting virtual currencies shall hold like-kind virtual currencies of the same volume as that held by the licensee but that is obligated to consumers, in lieu of the permissible investments otherwise required in this Act.

Section 59. That chapter 51A-17 be amended with a NEW SECTION:

(1) The director may suspend or revoke a license or order a licensee to revoke the designation of an authorized delegate if:

(a) The licensee violates this Act or a rule adopted or an order issued under this Act;

(b) The licensee does not cooperate with an examination or investigation by the director;

(c) The licensee engages in fraud, intentional misrepresentation, or gross negligence;

(d) An authorized delegate is convicted of a violation of a state or federal anti-money laundering statute, or violates a rule adopted or an order issued under this Act, as a result of the licensee's willful misconduct or willful blindness;

(e) The competence, experience, character, or general fitness of the licensee, authorized delegate, person in control of a licensee, key individual, or responsible person of the authorized delegate indicates that it is not in the public interest to permit the person to provide money transmission;

(f) The licensee engages in an unsafe or unsound practice;

(g) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors; or

(h) The licensee does not remove an authorized delegate after the director issues and serves upon the licensee a final order including a finding that the authorized delegate has violated this Act.

(2) In determining whether a licensee is engaging in an unsafe or unsound practice, the director may consider the size and condition of the licensee's money transmission, the magnitude of the loss, the gravity of the violation of this act, and the previous conduct of the person involved.

Section 60. That chapter 51A-17 be amended with a NEW SECTION:

(1) The director may issue an order suspending or revoking the designation of an authorized delegate, if the director finds that:

(a) The authorized delegate violated this Act or a rule adopted or an order issued under this Act;

(b) The authorized delegate did not cooperate with an examination or investigation by the director;

(c) The authorized delegate engaged in fraud, intentional misrepresentation, or gross negligence;

(d) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute;

(e) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized delegate to provide money transmission; or

(f) The authorized delegate is engaging in an unsafe or unsound practice.

(2) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money transmission, the magnitude of the loss, the gravity of the violation of this Act or a rule adopted or order issued under this Act, and the previous conduct of the authorized delegate.

(3) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the director.

Section 61. That chapter 51A-17 be amended with a NEW SECTION:

(1) If the director determines that a violation of this Act or of a rule adopted or an order issued under this Act by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the director may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of it upon the licensee or authorized delegate.

(2) The director may issue an order against a licensee to cease and desist from providing money transmission through an authorized delegate that is the subject of a separate order by the director.

(3) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26.

(4) A licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court, for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26.

(5) An order to cease and desist expires unless the director commences an administrative proceeding pursuant to chapter 1-26 within ten days after it is issued.

Section 62. That chapter 51A-17 be amended with a NEW SECTION:

The director may enter into a consent order at any time with a person to resolve a matter arising under this Act or a rule adopted or order issued under this Act. A consent order must be signed by the person to whom it is issued or by the person's authorized representative and must indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this Act or a rule adopted or an order issued under this Act has been violated.

Section 63. That chapter 51A-17 be amended with a NEW SECTION:

(1) A person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this Act or that intentionally makes a false entry or omits a material entry in such a record is guilty of a Class 6 felony.

(2) A person that knowingly engages in an activity for which a license is required under this Act without being licensed under this Act and who receives more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class 6 felony.

(3) A person that knowingly engages in an activity for which a license is required under this Act without being licensed under this Act and who receives no more than five hundred dollars in compensation within a thirty-day period from this activity is guilty of a Class 1 misdemeanor.

Section 64. That chapter 51A-17 be amended with a NEW SECTION:

The director may assess a civil penalty against a person that violates this Act or a rule adopted or an order issued under this Act in an amount not to exceed one thousand dollars per day for each day the violation is outstanding, plus this state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.

Section 65. That chapter 51A-17 be amended with a NEW SECTION:

(1) If the director has reason to believe that a person has violated or is violating section 8 of this Act, the director may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section 8 of this Act.

(2) In an emergency, the director may petition the circuit court for the issuance of a temporary restraining order ex parte pursuant to the rules of civil procedure.

(3) An order to cease and desist becomes effective upon service of it upon the person.

(4) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26.

(5) A person that is served with an order to cease and desist for violating section 8 of this Act may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26.

(6) An order to cease and desist expires unless the director commences an administrative proceeding within ten days after it is issued.

Section 66. That chapter 51A-17 be amended with a NEW SECTION:

In applying and construing this Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 67. That chapter 51A-17 be amended with a NEW SECTION:

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end, the provisions of this Act are severable.

Section 68. That chapter 51A-17 be amended with a NEW SECTION:

(1) A person licensed in this state to engage in the business of money transmission shall not be subject to the provisions of this Act, to the extent that the provisions conflict with current law or establish new requirements not imposed under current law, until such time as the licensee renews its current license or for six months after the effective date of this Act, whichever is later.

(2) Notwithstanding subdivision (1) of this section, a licensee shall only be required to amend its authorized delegate contracts for contracts entered into or amended after the effective date or the completion of any transition period contemplated under this section. Nothing herein shall be construed as limiting an authorized delegate's obligations to operate in full compliance with this Act as required by subdivision (3) of section 39 of this Act.

Section 69. That a NEW SECTION be added to chapter 51A-17:

Any person who engages in business activity regulated by this Act in the state is deemed to have consented to the jurisdiction of the courts of South Dakota for all actions arising under this Act.

Section 70. That a NEW SECTION be added to chapter 51A-17:

Any money coming into the custody of the division pursuant to this Act shall be deposited with the state treasurer. The state treasurer shall credit the money to the banking special revenue fund. Any expenditure of money out of the fund may only be made by appropriation by the Legislature through either the General Appropriation Act or a special appropriation bill. The director shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 71. That a NEW SECTION be added to chapter 51A-17:

The following provisions apply to the sharing of information collected and retained by the director during the administration of this Act:

(1) The provisions of section 4 of this Act regarding privacy or confidentiality apply to any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including any rule of a federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. The information and material may be shared with a state or federal regulatory official who has money transmission industry oversight authority without the loss of privilege or the loss of confidentiality protections by federal law or section 4 of this Act; and

(2) No information or material that is subject to privilege or confidentiality pursuant to this section is subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry regarding the information or material is waived, in whole or in part, by the person to whom the information or material pertains.

This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, money transmitters that is included in the nationwide mortgage licensing system and registry for access by the public.

Section 72. That § 51A-17-1 be REPEALED:

~~Terms used in this chapter mean:~~

~~(1) "Applicant," any person filing an application for a license under this chapter;~~

~~(2) "Authorized delegate," any entity designated by the licensee under the provisions of this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee;~~

~~(3) "Controlling person," any person in control of a licensee;~~

~~(4) "Director," the director of the Division of Banking;~~

~~(5) "Division," the Division of Banking;~~

~~(6) "Electronic instrument," any card or other tangible object for the transmission or payment of money that contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded, and for which the value is decremented upon each use. The term does not include a card or other tangible object that is redeemable by the issuer in goods or services;~~

~~(7) "Executive officer," the licensee's president, chair of the executive committee, senior officer responsible for the licensee's business, chief financial officer, and any other person who performs similar functions;~~

~~(8) "Key individual," any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee;~~

~~(9) "Key shareholder," any person, or group of persons acting in concert, who is the owner of twenty five percent or more of any voting class of an applicant's stock;~~

~~(10) "Licensee," any person licensed pursuant to this chapter;~~

~~(11) "Material litigation," any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant's or licensee's financial health and would be required to be referenced in that entity's annual audited financial statements, report to shareholders, or similar documents;~~

~~(12) "Monetary value," any medium of exchange, whether or not redeemable in money;~~

~~(13) "Money transmission," engagement in the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside the United States by any means;~~

~~(14) "Nationwide mortgage licensing system and registry," a licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of licensed mortgage loan originators and other regulated entities;~~

~~(15) "Outstanding payment instrument," any payment instrument issued by the licensee which has been sold in the United States directly by the licensee or any payment instrument issued by the licensee which has been sold by an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and which has not yet been paid by or for the licensee;~~

~~(16) "Payment instrument," any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not such instrument is negotiable. The term, payment instrument, does not include any credit card voucher, any letter of credit, or any instrument which is redeemable by the issuer in goods or services;~~

~~(17) "Remit," either the direct payment of the funds to the licensee or its representatives authorized to receive those funds, or the deposit of the funds in a bank, credit union, savings and loan association, or other similar financial institution in an account specified by the licensee;~~

~~(18) "Security device," any surety bond, irrevocable letter of credit, or similar security device;~~

~~(19) "Stored value," monetary value that is evidenced by an electronic record. Stored value does not include any item that is redeemable by the issuer or its affiliates in goods or services of the issuer or its affiliates;~~

~~(20) "Tangible net worth," aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.~~

Section 73. That § 51A-17-2 be REPEALED:

~~The following investments are permissible under § 51A-17-10:~~

~~(1) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers in a federally insured depository financial institution, and cash equivalents, including Automated Clearing House network items in transit to a payee, cash in transit via armored car, cash in smart safes, cash in licensee owned locations, debit card or credit card funded transmission receivables owed by any bank, or money market mutual funds rated "AAA" by Standard and Poor or the equivalent from any eligible rating service;~~

~~(2) Certificates of deposit or senior debt obligations of an insured depository institution, as defined in the Federal Deposit Insurance Act, 12 U.S.C. § 1813(c)(3), as of January 1, 2023, or as defined under the federal Credit Union Act, 12 U.S.C. § 1781, as of January 1, 2023;~~

~~(3) An obligation of the United States or a commission, agency, or instrumentality thereof; an obligation that is guaranteed fully as to principal and interest by the United States; or an obligation of a state or a governmental subdivision, agency, or instrumentality thereof;~~

~~(4) The full drawable amount of an irrevocable standby letter of credit of which the stated beneficiary is the director that stipulates that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds up to the letter of credit amount within seven days of presentation of the items required by § 51A-17-2.5;~~

~~(5) One hundred percent of the security device or deposit provided for under § 51A-17-8 that exceeds the average daily money transmission liability in this state.~~

Section 74. That § 51A-17-2.1 be REPEALED:

~~For purposes of this chapter, the term, control, means:~~

~~(1) The power to vote, directly or indirectly, at least twenty-five percent of the outstanding voting shares or voting interests of a licensee or~~

~~controlling person;~~

~~(2) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or controlling person; or~~

~~(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or controlling person.~~

~~A person is presumed to exercise controlling influence when the person holds the power to vote, directly or indirectly, at least ten percent of the outstanding voting shares or voting interests of a licensee or controlling person. A person presumed to exercise controlling influence as defined by this section may rebut the presumption of control if the person is a passive investor.~~

~~To determine the percentage of a licensee or controlling person controlled by any other person, the person's interest must be aggregated with the interest of the person's spouse, parents, children, siblings, mothers- and fathers-in-law, sons- and daughters-in-law, brothers- and sisters-in-law, and any other person who shares the person's home.~~

Section 75. That § 51A-17-2.2 be REPEALED:

~~For purposes of this chapter, the term, passive investor, means a person that:~~

~~(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a licensee or controlling person;~~

~~(2) Is not employed by and does not have any managerial duties of the licensee or controlling person;~~

~~(3) Does not have the power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or controlling person; and~~

~~(4) Either:~~

~~(a) Attests to subdivisions (1), (2), and (3), in a form and in a medium prescribed by the director; or~~

~~(b) Commits to the passivity characteristics of subdivisions (1), (2), and (3) in a written document.~~

Section 76. That § 51A-17-2.3 be REPEALED:

~~For purposes of § 51A-17-2, a letter of credit must be issued by a federally insured depository financial institution, a foreign bank that is authorized under federal law to maintain a federal agency or federal branch office in a state or states, or a foreign bank that is authorized under state law to maintain a branch in a state that bears an eligible rating or whose parent company bears an eligible rating and is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks, credit unions, and trust companies.~~

~~The letter of credit must be irrevocable, unconditional, and indicate that it is not subject to any condition or qualifications outside of the letter of credit. It must contain no reference to any other agreements, documents, or entities or otherwise provide for any security interest in the licensee.~~

~~The letter of credit must contain an issue date and expiration date and expressly provide for automatic extension, without a written amendment, for an~~

~~additional period of one year from the preset or each future expiration date, unless the issuer of the letter of credit notifies the director in writing by certified or registered mail or courier mail or other receipted means, at least sixty days prior to any expiration date, that the irrevocable letter of credit will not be extended.~~

Section 77. That § 51A-17-2.4 be REPEALED:

~~In the event of any notice of expiration or non extension of a letter of credit issued under § 51A 17 2.3, the licensee shall be required to demonstrate to the satisfaction of the director, fifteen days prior to expiration, that the licensee maintains and will maintain permissible investments in accordance with § 51A 17 10 upon the expiration of the letter of credit. If the licensee is not able to do so, the director may draw on the letter of credit in an amount up to the amount necessary to meet the licensee's requirements to maintain permissible investments in accordance with § 51A 17 10. Any such draw must be offset against the licensee's outstanding money transmission obligations. The drawn funds must be held in trust by the director or the director's designated agent, to the extent authorized by law, as agent for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations.~~

Section 78. That § 51A-17-2.5 be REPEALED:

~~For purposes of§ 51A 17 2.3, a letter of credit must provide that the issuer of the letter of credit will honor, at sight, a presentation made by the beneficiary to the issuer of the following documents on or prior to the expiration date of the letter of credit:~~

~~(1) The original letter of credit, including any amendments; and~~

~~(2) A written statement from the beneficiary stating that any of the following events have occurred:~~

~~(a) The filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. §§ 101 to 110, as of January 1, 2023, for bankruptcy or reorganization;~~

~~(b) The filing of a petition by or against the licensee for receivership, or the commencement of any other judicial or administrative proceeding for its dissolution or reorganization;~~

~~(c) The seizure of assets of a licensee by the director pursuant to an emergency order issued in accordance with applicable law, on the basis of an action, violation, or condition that has caused or is likely to cause the insolvency of the licensee; or~~

~~(d) The beneficiary has received notice of expiration or non extension of a letter of credit and the licensee failed to demonstrate to the satisfaction of the beneficiary that the licensee will maintain permissible investments in accordance with § 51A 17 10 upon the expiration or non extension of the letter of credit.~~

Section 79. That § 51A-17-2.6 be REPEALED:

~~The director may designate an agent to serve on the director's behalf as a beneficiary to a letter of credit so long as the agent and letter of credit meet the requirements established by the director. The director's agent may serve as agent for multiple licensing authorities for a single irrevocable letter of credit if the proceeds of the drawable amount for the purposes of §§ 51A 17 2 to 51A 17 2.5, inclusive, are assigned to the director.~~

Section 80. That § 51A-17-2.7 be REPEALED:

~~The director may participate in multistate processes designed to facilitate the issuance and administration of letters of credit, including services provided by the National Multistate Licensing System and State Regulatory Registry, L.L.C.~~

Section 81. That § 51A-17-2.8 be REPEALED:

~~Unless permitted by the director by rule or by order to exceed the limit as set forth in this section, the following investments are permissible under § 51A-17-10 to the extent specified:~~

~~(1) Receivables that are payable to a licensee from its authorized delegates in the ordinary course of business that are less than seven days old, up to fifty percent of the aggregate value of the licensee's total permissible investments. Receivables that are payable to a licensee from a single authorized delegate in the ordinary course of business may not exceed ten percent of the aggregate value of the licensee's total permissible investments;~~

~~(2) The following investments are permissible up to twenty percent per category and combined up to fifty percent of the aggregate value of the licensee's total permissible investments:~~

~~(a) A short term investment bearing an eligible rating. For purposes of this subsection, the term, short term investment, means an investment made in the previous six months;~~

~~(b) Commercial paper bearing an eligible rating;~~

~~(c) A bill, note, bond, or debenture bearing an eligible rating;~~

~~(d) U.S. tri party repurchase agreements collateralized at one hundred percent or more with U.S. government or agency securities, municipal bonds, or other securities bearing an eligible rating;~~

~~(e) Money market mutual funds rated less than "AAA" and equal to or higher than "A " by Standard & Poor or the equivalent from any other eligible rating service; and~~

~~(f) A mutual fund or other investment fund composed solely and exclusively of one or more permissible investments named in this section.~~

~~(3) Cash, including demand deposits, savings deposits, and funds in such accounts held for the benefit of the licensee's customers, at foreign depository institutions are permissible up to ten percent of the aggregate value of the licensee's total permissible investments if the licensee has received a satisfactory rating in its most recent examination, and the foreign depository institution has an eligible rating, is registered under the Foreign Account Tax Compliance Act, is not located in any country subject to sanctions from the Office of Foreign Asset Control, and is not located in a high-risk or non-cooperative jurisdiction as designated by the Financial Action Task Force.~~

Section 82. That § 51A-17-3 be REPEALED:

~~This chapter does not apply to:~~

~~(1) The United States or any department, agency, or instrumentality thereof;~~

~~(2) The United States Post Office;~~

~~(3) The state or any political subdivisions thereof;~~

~~(4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, or mutual banks organized under the laws of any state or the United States, and any subcontractor, agent, or independent contractor that sells payment instruments issued by any such entity or sells such entity's money transmission services on behalf of such entity;~~

~~(5) A South Dakota chartered trust company;~~

~~(6) The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof;~~

~~(7) An operator of a payment system to the extent that the system provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers; and~~

~~(8) An agent appointed by a payee to collect and process payment as the agent of the payee, if the agent can demonstrate that:~~

~~(a) A written agreement exists between the payee and the agent directing the agent to collect and process payments on the payee's behalf;~~

~~(b) The payee holds the agent out to the public as accepting payments on the payee's behalf; and~~

~~(c) Payment is treated as received by the payee upon receipt by the agent so there is no risk of loss to the individual initiating the transaction if the agent fails to remit the funds to the payee.~~

Section 83. That § 51A-17-4 be REPEALED:

~~No person, other than a person who is exempt under § 51A-17-3, may engage in the business of money transmission in this state without obtaining a license in accordance with this chapter and undergoing a criminal background investigation. A person is engaged in providing money transmission if the person provides those services to residents of this state, including any person who has no physical presence in this state. Each person subject to this section shall be licensed under and maintain a unique identifier through the nationwide mortgage licensing system and registry.~~

Section 84. That § 51A-17-5 be REPEALED:

~~If a licensee has a physical presence in this state, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.~~

~~Any authorized delegate of a licensee, acting within the scope of authority conferred by a written contract as described in § 51A-17-31, is not required to become licensed pursuant to this chapter. However, any such authorized delegate is subject to all other relevant portions of this chapter.~~

Section 85. That § 51A-17-6 be REPEALED:

~~Each licensee under this chapter shall maintain at all times a tangible net worth of the greater of one hundred thousand dollars or three percent of total assets for the first one hundred million dollars, two percent of additional assets from one hundred million dollars to one billion dollars, and one half of one percent of additional assets over one billion dollars. Tangible net worth must be demonstrated in an initial application by the applicant's most recent audited financial statement pursuant to §§ 51A-17-13(8) and 51A-17-14(5).~~

~~The director has the authority to exempt, in whole or in part, any applicant or licensee from the requirements of this section for good cause.~~

Section 86. That § 51A-17-7 be REPEALED:

~~Every corporate applicant, at the time of filing of an application for a license under this chapter and at all times after a license is issued, shall be in good standing in the state of its incorporation. All noncorporate applicants shall, at the time of the filing of an application for a license under this chapter and at all times after a license is issued, be registered or qualified to do business in the state.~~

Section 87. That § 51A-17-8 be REPEALED:

~~Each application shall be accompanied by a security device acceptable to the director in the amount of one hundred thousand dollars. The director may increase the amount of the security device to a maximum of five hundred thousand dollars upon the basis of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria. The security device shall be in a form satisfactory to the director and shall run to the state for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee with respect to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or the transmission of money, or both. In the case of a surety bond, the aggregate liability of the surety may not exceed the principal sum of the bond. Any claimant against the licensee may bring suit directly on the security device or the director may bring suit on behalf of any claimant, either in one action or in successive actions.~~

~~In lieu of a security device or of any portion of the principal thereof, as required by this section, the licensee may deposit with the director, or with such banks in this state as the licensee may designate and the director may approve, cash, interest bearing stocks and bonds, notes, debentures, or other obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United States, or of this state, or of a city, county, school district, or instrumentality of this state, or guaranteed by this state, to an aggregate amount, based upon principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof. The securities or cash shall be deposited as provided in this section and held to secure the same obligations as would the security device, but the depositor is entitled to receive all interest and dividends thereon, has the right, with the approval of the director, to substitute other securities for those deposited, and shall be required so to do on written order of the director made for good cause shown.~~

~~No security device may be cancelled without thirty days' written notice to the director. Cancellation does not affect any liability incurred or accrued during the period the security device was in effect.~~

Section 88. That § 51A-17-9 be REPEALED:

~~The security device shall remain in place for five years after the licensee~~

~~ceases money transmission operations in the state. However, the director may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in this state are reduced. The director may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the director for the security device in place at the time the licensee ceases money transmission operations in the state.~~

Section 89. That § 51A-17-10 be REPEALED:

~~A licensee shall maintain at all times permissible investments that have a market value computed in accordance with United States generally accepted accounting principles of not less than the aggregate amount of all of its outstanding money transmission obligations.~~

~~Except for permissible investments enumerated in § 51A-17-2, the director, with respect to any licensee, may limit the extent to which a specific investment maintained by a licensee within a class of permissible investments may be considered a permissible investment, if the specific investment represents undue risk to customers, not reflected in the market value of investments.~~

~~Permissible investments, as provided in § 51A-17-2, even if commingled with other assets of the licensee, are held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations in the event of insolvency, the filing of a petition by or against the licensee under the United States Bankruptcy Code, 11 U.S.C. §§ 101 to 110, as of January 1, 2023, for bankruptcy or reorganization, the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or in the event of an action by a creditor against the licensee who is not a beneficiary of this statutory trust. No permissible investments impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for a beneficiary of this statutory trust.~~

Section 90. That § 51A-17-10.1 be REPEALED:

~~Upon the establishment of a statutory trust in accordance with § 51A-17-10, or when any funds are drawn on a letter of credit pursuant to this section, the director shall notify the applicable regulator of each state in which the licensee is licensed to engage in money transmission, if any, of the establishment of the trust or the funds drawn on the letter of credit, as applicable. Notice is satisfied if performed pursuant to a multistate agreement or through the Nationwide Multistate Licensing System. Funds drawn on a letter of credit and any other permissible investments held in trust for the benefit of the purchasers and holders of the licensee's outstanding money transmission obligations, are deemed held in trust for the benefit of such purchasers and holders on a pro rata and equitable basis in accordance with statutes pursuant to which permissible investments are required to be held in this state and other states. Any statutory trust established under this section shall be terminated upon extinguishment of all of the licensee's outstanding money transmission obligations.~~

Section 91. That § 51A-17-10.2 be REPEALED:

~~The director may allow other types of investments that the director determines are of sufficient liquidity and quality to be a permissible investment. The director is authorized to participate in efforts with other state regulators to determine that other types of investments are of sufficient liquidity and quality to be a permissible investment.~~

Section 92. That § 51A-17-10.3 be REPEALED:

~~A licensee transmitting virtual currencies shall hold like-kind virtual currencies of the same volume as that held by the licensee but that is obligated to consumers, in lieu of the permissible investments otherwise required in this section.~~

Section 93. That § 51A-17-11 be REPEALED:

~~Each applicant for licensure under this chapter, except publicly traded corporations and their subsidiaries, shall provide to the nationwide mortgage licensing system and registry a complete set of the applicant's fingerprints for submission to the Federal Bureau of Investigation and any other government agency authorized to receive fingerprints for the purposes of a state, national, and international criminal history background check prior to permanent licensure of the applicant. The division may require a state and federal criminal history background check for any licensee who is the subject of a disciplinary investigation by the division. The failure to submit or cooperate with the criminal history background check under this section may result in denial of an application or revocation of a license. The applicant shall pay for any fees charged for the cost of fingerprinting or the criminal history background check.~~

Section 94. That § 51A-17-12 be REPEALED:

~~Each application for a license under this chapter shall be made in writing on a form prescribed by the director that includes:~~

~~(1) The exact name of the applicant, the applicant's principal address, any fictitious or trade name used by the applicant in the conduct of business, and the location of the applicant's business records;~~

~~(2) The history of the applicant's material litigation for the preceding five-year period;~~

~~(3) A complete set of the applicant's fingerprints and a signed waiver authorizing the division to conduct a criminal history background check of the applicant;~~

~~(4) A description of the business activities conducted by the applicant and a history of operations;~~

~~(5) A description of the business activities in which the applicant seeks to be engaged in the state;~~

~~(6) A list identifying the applicant's proposed authorized delegates in the state, if any, at the time of the filing of the application;~~

~~(7) A sample authorized delegate contract, if applicable;~~

~~(8) A sample form of payment instrument, if applicable;~~

~~(9) Each location at which the applicant and its authorized delegates, if any, propose to conduct the licensed activities in the state; and~~

~~(10) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which the payment instruments will be payable.~~

Section 95. That § 51A-17-13 be REPEALED:

~~In addition to the requirements of § 51A-17-12, an applicant that is a corporation shall provide:~~

~~(1) The date of the applicant's incorporation and state of incorporation;~~

~~(2) A certificate of good standing from the state in which the applicant was incorporated;~~

~~(3) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary of the applicant, and the disclosure of whether any parent or subsidiary is publicly traded on any stock exchange;~~

~~(4) The name, business and residence address, and employment history for the preceding five years of the applicant's executive officers and any officer or manager who will be in charge of the applicant's activities to be licensed;~~

~~(5) The name, business and residence address, and employment history for the preceding five years of any key shareholder of the applicant;~~

~~(6) The history of material litigation for the preceding five-year period of every executive officer or key shareholder of the applicant;~~

~~(7) A complete set of fingerprints and a signed waiver authorizing the division to conduct a criminal history background check of each executive officer or key shareholder of the applicant;~~

~~(8) A copy of the applicant's most recent audited financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder equity, and statement of changes in financial position, and, if available, the applicant's audited financial statements for the preceding two-year period. For an applicant that is a wholly owned subsidiary of another corporation, the applicant may submit either the parent corporation's consolidated audited financial statements for the current year and for the preceding two-year period, or the parent corporation's Form 10K reports filed with the United States Securities and Exchange Commission for the preceding three years in lieu of the applicant's financial statements. For an applicant that is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's regulator outside the United States may be submitted to satisfy the requirements of this subdivision; and~~

~~(9) A copy of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the preceding year.~~

Section 96. That § 51A-17-14 be REPEALED:

~~In addition to the requirements of § 51A-17-12, an applicant that is not a corporation shall provide:~~

~~(1) The name, business and residence address, personal financial statement, and employment history for the preceding five years, of each principal of the applicant and the name, business and residence address, and employment history for the preceding five years of any other person who will be in charge of the applicant's activities to be licensed;~~

~~(2) The place and date of the applicant's registration or qualification to do business in this state;~~

~~(3) The history of material litigation for the preceding five-year period for each individual having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's~~

~~business activities;~~

~~(4) A complete set of fingerprints and a signed waiver authorizing the division to conduct a criminal history background check for each person having any ownership interest in the applicant and each person who exercises supervisory responsibility with respect to the applicant's business activities; and~~

~~(5) A copy of the applicant's audited financial statements, including balance sheet, statement of income or loss, and statement of changes in financial position, for the current year and, if available, for the preceding two year period.~~

Section 97. That § 51A-17-15 be REPEALED:

~~The director may, for good cause shown, waive any requirement with respect to any license application or permit a license applicant to submit substituted information in its license application in lieu of the information required. The director may, if the circumstances dictate, require an applicant to provide additional information with respect to any license application.~~

Section 98. That § 51A-17-16 be REPEALED:

~~Each application shall be accompanied by a nonrefundable application fee not to exceed five hundred dollars and a licensee fee not to exceed one thousand dollars. The license fee shall be refunded if the application is denied. The director shall establish the application and license fees by rules promulgated pursuant to chapter 1-26.~~

Section 99. That § 51A-17-17 be REPEALED:

~~Upon receiving a complete application, the director shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The director may conduct an on-site investigation of the applicant, the reasonable cost of which shall be paid by the applicant. If the director finds that the applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community and that the applicant has fulfilled the requirements imposed by this chapter and has paid the required license fee, the director shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in this state until the license expires on the following January first. If these requirements have not been met, the director shall deny the application in writing setting forth the reasons for the denial.~~

Section 100. That § 51A-17-18 be REPEALED:

~~Any applicant aggrieved by a denial issued by the director under this chapter may, at any time within thirty days from the date of written notice of the denial, request a hearing pursuant to chapter 1-26. Any request for hearing shall be made in writing and postmarked within the thirty-day period if sent by way of United States postal mail or actually received by the division within the thirty-day period if sent by way of electronic mail or facsimile.~~

Section 101. That § 51A-17-19 be REPEALED:

~~A licensee shall pay an annual renewal fee not to exceed one thousand dollars. The director shall establish the renewal fee by rules promulgated pursuant to chapter 1-26. The renewal fee shall be accompanied by a report, in a form prescribed by the director, which shall include:~~

~~(1) A copy of its most recent audited consolidated annual financial statement, including balance sheet, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position, or, in the case of a licensee that is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation may be filed in lieu of the licensee's audited annual financial statement;~~

~~(2) The licensee shall provide the number of payment instruments sold by the licensee in the state, the dollar amount of those instruments, and the dollar amount of those instruments currently outstanding, for the calendar year or fiscal year immediately preceding the renewal period, or as much of this information as is available at the time of filing the renewal application;~~

~~(3) Any material changes to any of the information submitted by the licensee on its original application which have not previously been reported to the director on any other report required to be filed under this chapter;~~

~~(4) A list of the licensee's permissible investments; and~~

~~(5) A list of the locations, if any, within this state at which business regulated by this chapter is being conducted by either the licensee or its authorized delegates.~~

Section 102. That § 51A-17-20 be REPEALED:

~~Any application for renewal of a license in accordance with this chapter shall be filed with the director by December first and shall be accompanied by a fee and report as required under § 51A-17-19. Any application for renewal filed with the director after December first and before January first of the next calendar year is subject to the renewal fee and a late fee equal to twenty-five percent of the renewal fee. The director may not issue a license for any application for renewal filed after December thirty-first unless an application is filed in accordance with § 51A-17-12.~~

Section 103. That § 51A-17-21 be REPEALED:

~~A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate is limited to the amount of money transmitted or the face amount of the payment instrument or stored value purchased.~~

Section 104. That § 51A-17-22 be REPEALED:

~~Within fifteen business days of the occurrence of any one of the events listed in this section, a licensee shall electronically file an amendment or an advance change notice through the nationwide mortgage licensing system and registry describing the event and its expected impact on the licensee's activities in the state. The events include:~~

~~(1) Any material changes in information provided in a licensee's application or renewal report;~~

~~(2) The filing for bankruptcy or reorganization by the licensee;~~

~~(3) The institution of revocation or suspension proceedings against the licensee by any state or governmental authority with regard to the licensees' money transmission activities;~~

~~(4) Any felony indictment of the licensee or any of its executive officers, key individuals, or directors related to money transmission activities; and~~

~~(5) Any felony conviction of the licensee or any of its executive officers, key individuals, or directors related to money transmission activities.~~

Section 105. That § 51A-17-22.1 be REPEALED:

~~A licensee adding or replacing any key individual shall provide notice in a manner prescribed by the director within fifteen days after the effective date of the key individual's appointment and provide information as required by §§ 51A-17-12, 51A-17-13, and 51A-17-14 within forty-five days of the effective date.~~

Section 106. That § 51A-17-22.2 be REPEALED:

~~Within ninety days of the date on which the notice provided pursuant to § 51A-17-23 was determined to be complete, the director may issue a notice of disapproval of a key individual if the competence, experience, character, or integrity of the individual would not be in the best interests of the public or the customers of the licensee to permit the individual to be a key individual of such licensee. The key individual is deemed approved if not disapproved within ninety days after the date on which the notice was determined to be complete.~~

~~A notice of disapproval shall contain a statement of the basis for disapproval and shall be sent to the licensee and the disapproved individual. A licensee may appeal a notice of disapproval pursuant to chapter 1-26 after receipt of such notice of disapproval.~~

Section 107. That § 51A-17-22.3 be REPEALED:

~~If a multistate licensing process includes a key individual notice review and disapproval process pursuant to § 51A-17-23 and the licensee avails itself or is otherwise subject to the multistate licensing process, the director is authorized and encouraged to accept the determination of another state if the investigating state has sufficient staffing, expertise, and minimum standards for the purposes of § 51A-17-23. If South Dakota is the lead investigative state, the director is authorized and encouraged to investigate the applicant pursuant to § 51A-17-23 and the timeframes established by agreement through the multistate licensing process.~~

Section 108. That § 51A-17-23 be REPEALED:

~~A licensee shall electronically file an advance change notice through the nationwide mortgage licensing system and registry of a proposed change of control within fifteen days after learning of the proposed change of control and request approval of the acquisition. After review of a request for approval, the director may require the licensee to provide additional information concerning the proposed persons in control of the licensee. The additional information is limited to the same types required of the licensee or persons in control of the licensee as part of its original license or renewal application. The director shall approve a request for change of control if, after investigation, the director determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to operate the licensee or person in control of the licensee in a lawful and proper manner and that the interests of the public will not be jeopardized by the change of control.~~

Section 109. That § 51A-17-24 be REPEALED:

~~The following persons are exempt from the requirements of § 51A-17-23, but the licensee shall notify the director of any such change of control:~~

~~(1) A person that acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;~~

~~(2) A person that acquires control of a licensee by devise or descent;~~

~~(3) A person that acquires control as a personal representative, custodian, guardian, conservator, or trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; and~~

~~(4) A person that the director by rule or order exempts in the public interest.~~

Section 110. That § 51A-17-25 be REPEALED:

~~Section 51A-17-23 does not apply to public offerings of securities.~~

Section 111. That § 51A-17-26 be REPEALED:

~~Before filing a request for approval to acquire control, a person may request in writing a determination from the director as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the director determines that the person would not be a person in control of a licensee, the director shall enter an order to that effect and the proposed person and transaction is not subject to the requirements of § 51A-17-23.~~

Section 112. That § 51A-17-27 be REPEALED:

~~The director may conduct an examination or investigation of a licensee or authorized delegate or otherwise take independent action authorized by this chapter, rule adopted under this chapter and promulgated pursuant to chapter 1-26, or order issued under this chapter that is reasonably necessary to administer and enforce this chapter, rules adopted under this chapter and promulgated pursuant to chapter 1-26, and other applicable law. The director may:~~

~~(1) Conduct an examination either on-site or off-site;~~

~~(2) Conduct an examination in conjunction with an examination conducted by representatives of another state agency, an agency of another state, or the federal government;~~

~~(3) Accept the examination report of another state agency, agency of another state, or the federal government, or a report prepared by an independent accounting firm. A report accepted under this subdivision is considered an official report of the director; and~~

~~(4) Summon and examine, under oath, a key individual, employee of a licensee, or authorized delegate and require the individual, employee, or delegate to produce records regarding any matter related to the condition and business of the licensee or authorized delegate.~~

~~A licensee or authorized delegate shall provide, and the director must have full and complete access to, all records the director may reasonably require to conduct a complete examination. The records must be provided at the location and in the format specified by the director. The director may utilize multistate record production standards and examination procedures when the standards will reasonably achieve the requirements of this section.~~

~~Unless otherwise directed by the director, a licensee shall pay all costs reasonably incurred in connection with an examination of the licensee or the licensee's authorized delegates.~~

Section 113. That § 51A-17-28 be REPEALED:

~~The director may request financial data from a licensee in addition to that required under § 51A-17-19, or conduct an examination of any authorized delegate or location of a licensee within this state without prior notice to the authorized delegate or licensee only if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this chapter. If the director examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of such examination. If the director examines a licensee's location within the state, the licensee shall pay all reasonably incurred costs of such examination.~~

Section 114. That § 51A-17-29 be REPEALED:

~~Each licensee shall make, keep, and preserve the following books, accounts, and other records for a period of three years and which shall be open to inspection by the director:~~

~~(1) A record or records of each payment instrument and stored value sold;~~

~~(2) A general ledger, which general ledger shall be posted at least monthly, containing all assets, liabilities, capital, income, and expense accounts;~~

~~(3) Bank statements and bank reconciliation records;~~

~~(4) Records of outstanding payment instruments and stored value;~~

~~(5) Records of each payment instrument and stored value paid within the three-year period;~~

~~(6) A list of the names and addresses of all of the licensee's authorized delegates; and~~

~~(7) Any other records the director reasonably requires by rule promulgated pursuant to chapter 1-26.~~

~~Maintenance of such documents as are required by this section in a photographic, electronic, or other similar form constitutes compliance with this section. Records may be maintained at a location other than within this state if they are made accessible to the director on seven business days written notice.~~

Section 115. That § 51A-17-30 be REPEALED:

~~All information or reports obtained by the director from an applicant, licensee, or authorized delegate, whether obtained through reports, applications, examination, audits, investigation, or otherwise, including all information contained in or related to examination, investigation, operating, or condition reports prepared by, on behalf of, or for the use of the director, or financial statements, balance sheets, or authorized delegate information, are confidential. However, the director may disclose confidential information to officials and examiners of other state or federal regulatory authorities or to appropriate prosecuting attorneys.~~

~~This section does not prohibit the director from disclosing to the public a list of persons licensed under this chapter or the aggregated financial data on those licensees.~~

Section 116. That § 51A-17-31 be REPEALED:

~~Any licensee desiring to conduct licensed activities through an authorized delegate shall authorize each delegate to operate pursuant to an express written contract. Any such contract entered into after July 1, 2008, shall provide the following:~~

~~(1) That the licensee appoints the person as its delegate with authority to engage in money transmission on behalf of the licensee;~~

~~(2) That neither a licensee nor an authorized delegate may authorize subdelegates without the written consent of the director; and~~

~~(3) That licensees are subject to supervision and regulation by the director.~~

Section 117. That § 51A-17-32 be REPEALED:

~~An authorized delegate shall adhere to the following standards of conduct:~~

~~(1) No authorized delegate may make any fraudulent or false statement or misrepresentation to a licensee or to the director;~~

~~(2) All money transmission or sale or issuance of payment instrument activities conducted by an authorized delegate shall be strictly in accordance with the licensee's written procedures provided to the authorized delegate;~~

~~(3) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The failure of an authorized delegate to remit all money owing to a licensee within the time presented shall result in liability of the authorized delegate to the licensee for the licensee's actual damages. The director may establish, by rules promulgated pursuant to chapter 1-26, the maximum remittance time;~~

~~(4) An authorized delegate is deemed to consent to the director's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of authorized delegates of the licensee if the director has a reasonable basis to believe that the licensee or authorized delegate is in noncompliance with this chapter; and~~

~~(5) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate who exceeds the authority grant under the contract is subject to cancellation of the contract and further disciplinary action by the director.~~

Section 118. That § 51A-17-33 be REPEALED:

~~Any funds, less fees, received by an authorized delegate of a licensee from the sale or delivery of a payment instrument issued by a licensee or received by an authorized delegate for transmission shall, from the time such funds are received by such authorized delegate until such time when the funds or an equivalent amount are remitted by the authorized delegate to the licensee, constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any such funds with any other funds or property owned or controlled by the authorized delegate, any commingled proceeds and other property shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due the licensee.~~

Section 119. That § 51A-17-34 be REPEALED:

~~An authorized delegate shall report to the licensee the theft or loss of~~

~~payment instruments and stored value within twenty-four hours from the time the authorized delegate knew or should have known of such theft or loss.~~

Section 120. That § 51A-17-35 be REPEALED:

~~The director may suspend or revoke a licensee's license if the director finds that:~~

~~(1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying such application;~~

~~(2) The licensee's net worth becomes inadequate and the licensee, after ten days written notice from the director, fails to take such steps as the director deems necessary to remedy such deficiency;~~

~~(3) The licensee violates any material provision of this chapter or any rule or order promulgated by the director under authority of this chapter;~~

~~(4) The licensee is convicted of a violation of a state or federal anti-money laundering statute or is subject to an enforcement action for a violation of a state or federal anti-money laundering statute;~~

~~(5) The licensee is conducting its business in an unsafe or unsound manner;~~

~~(6) The licensee is insolvent;~~

~~(7) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted in writing its inability to pay its debts as they become due;~~

~~(8) The licensee has applied for an adjudication of bankruptcy, reorganization, arrangement, or other relief under any bankruptcy;~~

~~(9) The licensee refuses to permit the director to make any examination authorized by this chapter;~~

~~(10) The licensee fails to make any report required by this chapter; or~~

~~(11) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to permit the licensee to conduct its business.~~

Section 121. That § 51A-17-36 be REPEALED:

~~The director may issue an order suspending or revoking the designation of an authorized delegate, if the director finds that:~~

~~(1) The authorized delegate violated this chapter or a rule adopted or an order issued under this chapter;~~

~~(2) The authorized delegate did not cooperate with an examination or investigation by the director;~~

~~(3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;~~

~~(4) The authorized delegate is convicted of a violation of a state or federal anti-money laundering statute or is subject to an enforcement action for a violation of a state or federal anti-money laundering statute;~~

~~(5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the authorized delegate indicates that it is not in the public interest to permit the authorized~~

~~delegate to provide money services; or~~

~~(6) The authorized delegate is engaging in an unsafe or unsound practice. In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the director may consider the size and condition of the authorized delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the authorized delegate.~~

~~An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate pursuant to chapter 1-26.~~

Section 122. That § 51A-17-37 be REPEALED:

~~If the director determines that a violation of this chapter or of a rule adopted or an order issued pursuant to this chapter by a licensee or authorized delegate is likely to cause immediate and irreparable harm to the licensee, its customers, or the public as a result of the violation, or cause insolvency or significant dissipation of assets of the licensee, the director may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The director may issue an order against a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to § 51A-17-36. The order becomes effective upon service of it upon the licensee or authorized delegate. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26. However, a licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26.~~

Section 123. That § 51A-17-38 be REPEALED:

~~The director shall commence an administrative proceeding pursuant to chapter 1-26 within twenty days after issuing an order to cease and desist. The director may apply to the circuit court for an appropriate order to protect the public interest.~~

Section 124. That § 51A-17-39 be REPEALED:

~~The director may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order shall be signed by the person to whom it is issued or by the person's authorized representative, and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.~~

Section 125. That § 51A-17-40 be REPEALED:

~~The director may assess a fine against a person that violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed five hundred dollars per day for each day the violation is outstanding, plus the state's costs and expenses for the investigation and prosecution of the matter, including reasonable attorney's fees.~~

Section 126. That § 51A-17-41 be REPEALED:

~~Any person that intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this~~

~~chapter or that intentionally makes a false entry or omits a material entry in such a record is guilty of a Class 6 felony. Any person that knowingly engages in any activity for which a license is required under this chapter without being licensed under this chapter is guilty of a Class 6 felony.~~

Section 127. That § 51A-17-42 be REPEALED:

~~If the director has reason to believe that a person has violated or is violating § 51A-17-4, the director may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of § 51A-17-4. In an emergency, the director may petition the circuit court for the issuance of a temporary restraining order. An order to cease and desist becomes effective upon service of it upon the person. An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 1-26. A person that is served with an order to cease and desist for violating § 51A-17-4 may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to chapter 1-26. The director shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.~~

Section 128. That § 51A-17-43 be REPEALED:

~~Any person who engages in business activity regulated by this chapter is deemed to have consented to the jurisdiction of the courts of South Dakota for all actions arising under this chapter.~~

Section 129. That § 51A-17-45 be REPEALED:

~~No license granted pursuant to this chapter is assignable.~~

Section 130. That § 51A-17-46 be REPEALED:

~~Any money coming into the custody of the division pursuant to this chapter shall be deposited with the state treasurer. The state treasurer shall credit the money to the banking special revenue fund. Any expenditure of money out of the fund may only be made by appropriation by the Legislature through either the General Appropriation Act or a special appropriation bill. The director shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this chapter.~~

Section 131. That § 51A-17-47 be REPEALED:

~~The director may promulgate rules pursuant to chapter 1-26 to establish the process for conducting background investigations, for the conduct of examinations, the reporting of information required by this chapter, and the process for the suspension or revocation of a license issued by the division.~~

Section 132. That § 51A-17-48 be REPEALED:

~~The director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the United States Department of Justice and any other state and federal regulatory official or agency with money transmission industry oversight authority as deemed necessary by the director to carry out the responsibilities of this chapter.~~

Section 133. That § 51A-17-49 be REPEALED:

~~The director may establish a relationship or enter into a contract with the nationwide mortgage licensing system and registry or an entity designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to any licensee or person subject to the provisions of this chapter.~~

Section 134. That § 51A-17-50 be REPEALED:

~~The following provisions apply to the sharing of information collected and retained by the director during the administration of this chapter:~~

~~(1) The provisions of § 51A-17-30 regarding privacy or confidentiality apply to any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including any rule of a federal or state court, with respect to the information or material, continue to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. The information and material may be shared with a state or federal regulatory official who has money transmission industry oversight authority without the loss of privilege or the loss of confidentiality protections by federal law or § 51A-17-30; and~~

~~(2) No information or material that is subject to privilege or confidentiality pursuant to this section is subject to:~~

~~(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or~~

~~(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the nationwide mortgage licensing system and registry regarding the information or material is waived, in whole or in part, by the person to whom the information or material pertains.~~

~~This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, money transmitters that is included in the nationwide mortgage licensing system and registry for access by the public.~~

Section 135. That § 51A-17-51 be REPEALED:

~~The director may participate in multistate supervisory processes established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof for all licensees in this state and other states. As a participant in multistate supervision, the director may:~~

~~(1) Cooperate, coordinate, and share information with other states and federal regulators pursuant to § 51A-17-30;~~

~~(2) Enter into written cooperation, coordination, or information sharing contracts or agreements with organizations comprised of state or federal governmental agencies; and~~

~~(3) Cooperate, coordinate, and share information with organizations comprised of state or federal governmental agencies, provided that the organizations agree in writing to maintain the confidentiality and security~~

~~of the shared information pursuant to § 51A-17-30.~~

~~The director may not waive, and nothing in this section constitutes a waiver of, the director's authority to conduct an examination, investigation, or otherwise take independent action authorized by this chapter, rule adopted under this chapter, or order issued under this chapter to enforce compliance with applicable state or federal law. A joint examination or investigation, or acceptance of an examination or investigation report, does not constitute a waiver of an examination assessment provided for in this chapter.~~

Signed March 14, 2024

FIDUCIARIES AND TRUSTS

Chapter 197
(House Bill 1117)

An Act to repeal a requirement for the filing of an annual report regarding prearranged funeral trust contracts.

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

Section 1. That § 55-11-9 be REPEALED:

~~Before March first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any prearranged funeral trust contracts shall file a report covering the period of the preceding calendar year with the State Board of Funeral Service. The report shall include:~~

~~(1) The name and address of the licensed funeral establishment or cemetery association, the name and address of the manager or operator thereof, and the name of the contract holder;~~

~~(2) The lump sum consideration paid upon each prearranged funeral trust contract sold or the total amount in dollars of any installments paid upon each prearranged funeral trust contract sold;~~

~~(3) The name and address of the banking institution, federal credit union or savings and loan association in which such consideration was deposited;~~

~~(4) The total in dollars of all sums received as consideration upon prearranged funeral trust contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1986, which are undrawn or unexpended and on deposit in a banking institution, federal credit union or savings and loan association or in the hands of the licensed funeral establishment or cemetery association; and~~

~~(5) The current value, including accrued interest of each prearranged funeral trust contract being held.~~

~~The report shall be accompanied by a filing fee of five dollars. The contracts filed under this section are not public records and are confidential records of the board. Failure to file this report is a Class 2 misdemeanor.~~

Signed February 28, 2024

UNIFORM COMMERCIAL CODE

Chapter 198

(House Bill 1163)

An Act to amend provisions of the Uniform Commercial Code.

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

Section 1. That § 57A-1-201 be AMENDED:

57A-1-201. (a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other chapters of this title that apply to particular chapters or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other chapters of this title that apply to particular chapters or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in § 57A-1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, a negotiable tangible document of title, or a certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under chapter 57A-2 may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(9A) "Central bank digital currency," a national digital currency issued by a central bank and that is widely available to the general public.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that, based on the totality of the circumstances, a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. ~~Conspicuous terms include the following:~~

~~(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same or lesser size; and~~

~~(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.~~

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title, means voluntary transfer of control; and with respect to an instrument, a tangible document of title, or an authoritative tangible copy of a record evidencing chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in

the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title is evidenced by a record consisting of information stored in an electronic medium. A tangible document of title is evidenced by a record consisting of information that is inscribed on a tangible medium.

(16A) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit; or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in chapter 57A-5, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) A person in control, other than pursuant to section 36 of this Act, of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange that is currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries. The term is not intended and cannot be construed to create or adopt a central bank digital currency.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality~~, public corporation~~, or any other legal or commercial entity. The term includes a protected series, however denominated, of an entity if the protected series is established under law other than this title that limits, or limits if conditions specified under the law are satisfied, the ability of a creditor of the entity or of any other protected series of the entity to satisfy a claim from assets of the protected series.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to chapter 57A-9. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under § 57A-2-401, but a buyer may also acquire a "security interest" by complying with chapter 57A-9. Except as otherwise provided in § 57A-2-505, the right of a seller or lessor of goods under chapter 57A-2 or 57A-2A to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with chapter 57A-9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under § 57A-2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to § 57A-1-203.

(36) "Send," in connection with a ~~writing,~~ record~~,~~ or ~~notice~~notification, means:

(A) To deposit in the mail~~,~~ ~~or~~ deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for~~,~~ ~~and properly addressed and, in the case of an instrument, to an address specified thereon or~~

~~otherwise agreed, or if there be none~~ addressed to any address reasonable under the circumstances; or

(B) ~~In any other way to cause to be received any record or notice within the time it would have arrived if properly sent~~To cause the record or notification to be received within the time it would have been received if properly sent under subparagraph (A).

(37) ~~"Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.~~"Sign" means, with present intent to authenticate or adopt a record to:

(A) Execute or adopt a tangible symbol; or

(B) Attach to or logically associate with the record an electronic symbol, sound, or process.

"Signed," "signing," and "signature" have corresponding meanings.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

Section 2. That § 57A-1-204 be AMENDED:

57A-1-204. Except as otherwise provided in chapters 57A-3, 57A-4, ~~and~~ 57A-5, 57A-6, and sections 92 through 98 of this Act, inclusive, a person gives value for rights if the person acquires them:

(1) In return for a binding commitment to extend credit or for the extension of immediately available credit, whether or not drawn upon and whether or not a charge-back is provided for in the event of difficulties in collection;

(2) As security for, or in total or partial satisfaction of, a preexisting claim;

(3) By accepting delivery under a preexisting contract for purchase; or

(4) In return for any consideration sufficient to support a simple contract.

Section 3. That a NEW SECTION be added to chapter 57A-1:

Nothing in this Act is intended or can be construed to create or adopt a central bank digital currency.

Section 4. That § 57A-1-301 be AMENDED:

57A-1-301. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state

or nation shall govern their rights and duties. Failing such agreement this title applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this title specifies the applicable law, that provision governs and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

Rights of creditors against sold goods. § 57A-2-402.

Applicability of the chapter on leases. §§ 57A-2A-105 and 57A-2A-106.

Applicability of the chapters on bank deposits and collections. § 57A-4-102.

Governing law in the chapter on funds transfers. § 57A-4A-507.

Letters of Credit. § 57A-5-116.

Applicability of the chapters on investment securities. § 57A-8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. §§ 57A-9-301 to 57A-9-307, inclusive.

Law governing controllable electronic records. Section 98 of this Act.

Section 5. That § 57A-1-306 be AMENDED:

57A-1-306. A claim or right arising out of an alleged breach may be discharged in whole or in part without consideration by agreement of the aggrieved party in ~~an authenticated~~ a signed record.

Section 6. That § 57A-2-102 be AMENDED:

57A-2-102. ~~Unless the context otherwise requires, this chapter applies to transactions in goods; they do not apply to any transaction which although in the form of an unconditional contract to sell or present sale is intended to operate only as a security transaction nor does this chapter impair or repeal any statute regulating sales to consumers, farmers or other specified classes of buyers.~~

(1) Unless the context otherwise requires, and except as provided in subsection (3), this chapter applies to transactions in goods and, in the case of a hybrid transaction, it applies to the extent provided in subsection (2).

(2) In a hybrid transaction:

(a) If the sale-of-goods aspects do not predominate, only the provisions of this chapter which relate primarily to the sale-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply.

(b) If the sale-of-goods aspects predominate, this chapter applies to the transaction but does not preclude application in appropriate circumstances of other law to aspects of the transaction which do not relate to the sale of goods.

(3) This chapter does not:

(a) Apply to a transaction that, even though in the form of an unconditional contract to sell or present sale, operates only to create a security interest; or

(b) Impair or repeal a statute regulating sales to consumers, farmers, or other specified classes of buyers.

Section 7. That § 57A-2-106 be AMENDED:

57A-2-106. (1) In this chapter unless the context otherwise requires "contract" and "agreement" are limited to those relating to the present or future sale of goods. "Contract for sale" includes both a present sale of goods and a contract to sell goods at a future time. A "sale" consists in the passing of title from the seller to the buyer for a price (§ 57A-2-401). A "present sale" means a sale which is accomplished by the making of the contract.

(2) Goods or conduct including any part of a performance are "conforming" or conform to the contract when they are in accordance with the obligations under the contract.

(3) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the contract otherwise than for its breach. On "termination" all obligations which are still executory on both sides are discharged but any right based on prior breach or performance survives.

(4) "Cancellation" occurs when either party puts an end to the contract for breach by the other and its effect is the same as that of "termination" except that the canceling party also retains any remedy for breach of the whole contract or any unperformed balance.

(5) "Hybrid transaction" means a single transaction involving a sale of goods and:

(a) The provision of services;

(b) A lease of other goods; or

(c) A sale, lease, or license of property other than goods.

Section 8. That § 57A-2-201 be AMENDED:

57A-2-201. (1) Except as otherwise provided in this section a contract for the sale of goods for the price of five hundred dollars or more is not enforceable by way of action or defense unless there is ~~some writing~~a record sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by ~~his~~the party's authorized agent or broker. A ~~writing~~record is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this ~~paragraph~~subsection beyond the quantity of goods shown in ~~such writing~~the record.

(2) Between merchants if within a reasonable time a ~~writing~~record in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against ~~such~~the party unless ~~written~~ notice in a record of objection to its contents is given within ten days after it is received.

(3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable

(a) If the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

(b) If the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods for which payment has been made and accepted or which have been received and accepted (§ 57A-2-606); or

(d) With respect to the sale of grain, grain sorghums, beans, pulse crops, and oil seeds:

(i) If the party seeking enforcement of the contract has a recorded statement of the contract terms with the party against whom enforcement is sought or a noncontract party's verbal or written verification of the contract terms confirmed by the party against whom enforcement is sought; or

(ii) If the party seeking enforcement of the contract has a written agreement by the party against whom enforcement is sought providing for the enforcement of verbal contracts; or

(iii) If within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving the writing in confirmation has reason to know its contents, the writing in confirmation satisfies the requirements of subsection (1) of this section against such party unless written notice of objection to its contents is given within two days after the writing in confirmation is received.

Section 9. That § 57A-2-202 be AMENDED:

57A-2-202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of performance, course of dealing or usage of trade (§ 57A-1-303); and

(b) By evidence of consistent additional terms unless the court finds the ~~writing~~record to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 10. That § 57A-2-203 be AMENDED:

57A-2-203. The affixing of a seal to a ~~writing~~record evidencing a contract for sale or an offer to buy or sell goods does not constitute the ~~writing~~record of a sealed instrument and the law with respect to sealed instruments does not apply to such a contract or offer.

Section 11. That § 57A-2-205 be AMENDED:

57A-2-205. An offer by a merchant to buy or sell goods in a signed ~~writing~~record which by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated or if no time is stated for a reasonable time, but in no event may such period of irrevocability exceed three months; but any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 12. That § 57A-2-209 be AMENDED:

57A-2-209. (1) An agreement modifying a contract within this chapter needs no consideration to be binding.

(2) A signed agreement which excludes modification or rescission except by a signed writing or other signed record cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

(3) The requirements of the statute of frauds section of this chapter ~~(~~, § 57A-2-201~~)~~, must be satisfied if the contract as modified is within their provisions.

(4) Although an attempt at modification or rescission does not satisfy the requirements of subsections (2) or (3) it can operate as a waiver.

(5) A party who has made a waiver affecting an executory portion of the contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 13. That § 57A-2A-102 be AMENDED:

57A-2A-102. (1) This chapter applies to any transaction, regardless of form, that creates a lease and, in the case of a hybrid lease, it applies to the extent provided in subsection (2).

(2) In a hybrid lease:

(a) If the lease-of-goods aspects do not predominate:

(i) Only the provisions of this chapter which relate primarily to the lease-of-goods aspects of the transaction apply, and the provisions that relate primarily to the transaction as a whole do not apply;

(ii) Section 57A-2A-209 applies if the lease is a finance lease; and

(iii) Section 57A-2A-407 applies to the promises of the lessee in a financial lease to the extent the promises are consideration for the right to possession and use of the leased goods; and

(b) If the lease-of-goods aspects predominate, this chapter applies to the transaction, but does not preclude application in appropriate circumstances of other law to aspects of the lease which do not relate to the lease of goods.

Section 14. That § 57A-2A-103 be AMENDED:

57A-2A-103. (1) In this chapter unless the context otherwise requires:

(a) "Buyer in ordinary course of business" means a person who in good faith and without knowledge that the sale to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods buys in ordinary course from a person in the business of selling goods of that kind but does not include a pawnbroker. "Buying" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting contract

for sale but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(b) "Cancellation" occurs when either party puts an end to the lease contract for default by the other party.

(c) "Commercial unit" means such a unit of goods as by commercial usage is a single whole for purposes of lease and division of which materially impairs its character or value on the market or in use. A commercial unit may be a single article, as a machine, or a set of articles, as a suite of furniture or a line of machinery, or a quantity, as a gross or carload, or any other unit treated in use or in the relevant market as a single whole.

(d) "Conforming" goods or performance under a lease contract means goods or performance that are in accordance with the obligations under the lease contract.

(e) "Consumer lease" means a lease that a lessor regularly engaged in the business of leasing or selling makes to a lessee who is a natural person and takes under the lease primarily for a personal, family, or household purpose.

(f) "Fault" means wrongful act, omission, breach or default.

(g) "Finance lease" means a lease in which (i) the lessor does not select, manufacture or supply the goods, (ii) the lessor acquires the goods or the right to possession and use of the goods in connection with the lease, and (iii) either (A) the lessee receives a copy of the contract evidencing the lessor's purchase of the goods on or before signing the lease contract, (B) the lessee's approval of the contract evidencing the lessor's purchase of the goods is a condition to effectiveness of the lease contract, (C) the lessor (aa) informs the lessee in writing of the identity of the supplier unless the lessee has selected the supplier and directed the lessor to purchase the goods from the supplier, (bb) informs the lessee in writing that the lessee may have rights under the contract evidencing the lessor's purchase of the goods, and (cc) advises the lessee in writing to contact the supplier for a description of any such rights, or (D) the lease contract discloses all warranties and other rights provided to the lessee by the lessor and supplier in connection with the lease contract and informs the lessee that there are no warranties or other rights provided to the lessee by the lessor and supplier other than those disclosed in the lease contract.

(h) "Goods" means all things that are movable at the time of identification to the lease contract, or are fixtures (§ 57A-2A-309), but the term does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like, including oil and gas, before extraction. The term also includes the unborn young of animals.

(h.1) "Hybrid lease" means a single transaction involving a lease of goods and:

(i) The provision of services;

(ii) A sale of other goods; or

(iii) A sale, lease, or license of property other than goods.

(i) "Installment lease contract" means a lease contract that authorizes or requires the delivery of goods in separate lots to be separately accepted, even though the lease contract contains a clause "each delivery is a separate lease" or its equivalent.

(j) "Lease" means a transfer of the right to possession and use of goods for a term in return for consideration, but a sale, including a sale on approval or a sale or return, or retention or creation of a security interest is not a lease. Unless the context clearly indicates otherwise, the term includes a sublease.

(k) "Lease agreement" means the bargain, with respect to the lease, of the lessor and the lessee in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter. Unless the context clearly indicates otherwise, the term includes a sublease agreement.

(l) "Lease contract" means the total legal obligation that results from the lease agreement as affected by this chapter and any other applicable rules of law. Unless the context clearly indicates otherwise, the term includes a sublease contract.

(m) "Leasehold interest" means the interest of the lessor or the lessee under a lease contract.

(n) "Lessee" means a person who acquires the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessee.

(o) "Lessee in ordinary course of business" means a person who in good faith and without knowledge that the lease to him is in violation of the ownership rights or security interest or leasehold interest of a third party in the goods leases in ordinary course from a person in the business of selling or leasing goods of that kind but does not include a pawnbroker. "Leasing" may be for cash or by exchange of other property or on secured or unsecured credit and includes acquiring goods or documents of title under a preexisting lease contract but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(p) "Lessor" means a person who transfers the right to possession and use of goods under a lease. Unless the context clearly indicates otherwise, the term includes a sublessor.

(q) "Lessor's residual interest" means the lessor's interest in the goods after expiration, termination or cancellation of the lease contract.

(r) "Lien" means a charge against or interest in goods to secure payment of a debt or performance of an obligation, but the term does not include a security interest.

(s) "Lot" means a parcel or a single article that is the subject matter of a separate lease or delivery, whether or not it is sufficient to perform the lease contract.

(t) "Merchant lessee" means a lessee that is a merchant with respect to goods of the kind subject to the lease.

(u) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain.

The discount is determined by the interest rate specified by the parties if the rate was not manifestly unreasonable at the time the transaction was entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into.

(v) "Purchase" includes taking by sale, lease, mortgage, security interest, pledge, gift or any other voluntary transaction creating an interest in goods.

(w) "Sublease" means a lease of goods the right to possession and use of which was acquired by the lessor as a lessee under an existing lease.

(x) "Supplier" means a person from whom a lessor buys or leases goods to be leased under a finance lease.

(y) "Supply contract" means a contract under which a lessor buys or leases goods to be leased.

(z) "Termination" occurs when either party pursuant to a power created by agreement or law puts an end to the lease contract otherwise than for default.

(2) Other definitions applying to this chapter and the sections in which they appear are:

"Accessions." § 57A-2A-310(1).

"Construction mortgage." § 57A-2A-309(1)(d).

"Encumbrance." § 57A-2A-309(1)(e).

"Fixtures." § 57A-2A-309(1)(a).

"Fixture filing." § 57A-2A-309(1)(b).

"Purchase money lease." § 57A-2A-309(1)(c).

(3) The following definitions apply to this chapter:

"Account." § 57A-9-102(a)(2).

"Between merchants." § 57A-2-104(3).

"Buyer." § 57A-2-103(1)(a).

"Chattel paper." § 57A-9-102(a)(11).

"Consumer goods." § 57A-9-102(a)(23).

"Document." § 57A-9-102(a)(30).

"Entrusting." § 57A-2-403(3).

"General intangible." § 57A-9-102(a)(42).

"Instrument." § 57A-9-102(a)(47).

"Merchant." § 57A-2-104(1).

"Mortgage." § 57A-9-102(a)(55).

"Pursuant to commitment." § 57A-9-102(a)(69).

"Receipt." § 57A-2-103(1)(c).

"Sale." § 57A-2-106(1).

"Sale on approval." § 57A-2-326(1)(a).

"Sale or return." § 57A-2-326(1)(b).

"Seller." § 57A-2-103(1)(d).

(4) In addition, chapter 57A-1 (commencing with § 57A-1-101) contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 15. That § 57A-2A-107 be AMENDED:

57A-2A-107. Any claim or right arising out of an alleged default or breach of warranty may be discharged in whole or in part without consideration by a ~~written~~ waiver or renunciation in a signed ~~and~~record delivered by the aggrieved party.

Section 16. That § 57A-2A-201 be AMENDED:

57A-2A-201. (1) A lease contract is not enforceable by way of action or defense unless:

(a) In a lease contract that is not a consumer lease, the total payments to be made under the lease contract, excluding payments for options to renew or buy, are less than one thousand dollars; or

(b) There is a ~~writing~~record, signed by the party against whom enforcement is sought or by that party's authorized agent, sufficient to indicate that a lease contract has been made between the parties and to describe the goods leased and the lease term.

(2) Any description of leased goods or of the lease term is sufficient and satisfies subsection (1)(b) of this section, whether or not it is specific, if it reasonably identifies what is described.

(3) A ~~writing~~record is not insufficient because it omits or incorrectly states a term agreed upon, but the lease contract is not enforceable under subsection (1)(b) of this section beyond the lease term and the quantity of goods shown in the ~~writing~~record.

(4) A lease contract that does not satisfy the requirements of subsection (1) of this section, but which is valid in other respects, is enforceable:

(a) If the goods are to be specially manufactured or obtained for the lessee and are not suitable for lease or sale to others in the ordinary course of the lessor's business, and the lessor, before notice of repudiation is received and under circumstances that reasonably indicate that the goods are for the lessee, has made either a substantial beginning of their manufacture or commitments for their procurement;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony or otherwise in court that a lease contract was made, but the lease contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) With respect to goods that have been received and accepted by the lessee.

(5) The lease term under a lease contract referred to in subsection (4) of this section is:

(a) If there is a ~~writing~~record signed by the party against whom enforcement is sought or by that party's authorized agent specifying the lease term, the term so specified;

(b) If the party against whom enforcement is sought admits in that party's pleading, testimony, or otherwise in court a lease term, the term so admitted; or

(c) A reasonable lease term.

Section 17. That § 57A-2A-202 be AMENDED:

57A-2A-202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a ~~writing~~record intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented:

(a) By course of dealing or usage of trade or by course of performance; and

(b) By evidence of consistent additional terms unless the court finds the ~~writing~~record to have been intended also as a complete and exclusive statement of the terms of the agreement.

Section 18. That § 57A-2A-203 be AMENDED:

57A-2A-203. The affixing of a seal to a ~~writing~~record evidencing a lease contract or an offer to enter into a lease contract does not render the ~~writing~~record a sealed instrument and the law with respect to sealed instruments does not apply to the lease contract or offer.

Section 19. That § 57A-2A-205 be AMENDED:

57A-2A-205. An offer by a merchant to lease goods to or from another person in a signed ~~writing~~record that by its terms gives assurance it will be held open is not revocable, for lack of consideration, during the time stated or, if no time is stated, for a reasonable time, but in no event may the period of irrevocability exceed three months. Any such term of assurance on a form supplied by the offeree must be separately signed by the offeror.

Section 20. That § 57A-2A-208 be AMENDED:

57A-2A-208. (1) An agreement modifying a lease contract needs no consideration to be binding.

(2) A signed lease agreement that excludes modification or rescission except by a signed ~~writing~~record may not be otherwise modified or rescinded, but, except as between merchants, such a requirement on a form supplied by a merchant must be separately signed by the other party.

(3) Although an attempt at modification or rescission does not satisfy the requirements of subsection (2) of this section, it may operate as a waiver.

(4) A party who has made a waiver affecting an executory portion of a lease contract may retract the waiver by reasonable notification received by the other party that strict performance will be required of any term waived, unless the retraction would be unjust in view of a material change of position in reliance on the waiver.

Section 21. That § 57A-3-104 be AMENDED:

57A-3-104. (a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, ~~or~~ (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor, (iv) a term that specifies the law that governs the promise or order, or (v) an undertaking to resolve in a specified forum a dispute concerning the promise or order.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except paragraph (1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

(d) A promise or order other than a check is not an instrument if, at the time it is issued or first comes into possession of a holder, it contains a conspicuous statement, however expressed, to the effect that the promise or order is not negotiable or is not an instrument governed by this chapter.

(e) An instrument is a "note" if it is a promise and is a "draft" if it is an order. If an instrument falls within the definition of both "note" and "draft," a person entitled to enforce the instrument may treat it as either.

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(g) "Cashier's check" means a draft with respect to which the drawer and drawee are the same bank or branches of the same bank.

(h) "Teller's check" means a draft drawn by a bank (i) on another bank, or (ii) payable at or through a bank.

(i) "Traveler's check" means an instrument that (i) is payable on demand, (ii) is drawn on or payable at or through a bank, (iii) is designated by the term "traveler's check" or by a substantially similar term, and (iv) requires, as a condition to payment, a countersignature by a person whose specimen signature appears on the instrument.

(j) "Certificate of deposit" means an instrument containing an acknowledgment by a bank that a sum of money has been received by the bank and a promise by the bank to repay the sum of money. A certificate of deposit is a note of the bank.

Section 22. That § 57A-3-105 be AMENDED:

57A-3-105. (a) "Issue" means:

(1) ~~the~~The first delivery of an instrument by the maker or drawer, whether to a holder or nonholder, for the purpose of giving rights on the instrument to any person; or

(2) If agreed by the payee, the first transmission by the drawer to the payee of an image of an item and information derived from the item that enables the depositary bank to collect the item by transferring or presenting under federal law an electronic check.

(b) An unissued instrument, or an unissued incomplete instrument that is completed, is binding on the maker or drawer, but nonissuance is a defense. An instrument that is conditionally issued or is issued for a special purpose is binding on the maker or drawer, but failure of the condition or special purpose to be fulfilled is a defense.

(c) "Issuer" applies to issued and unissued instruments and means a maker or drawer of an instrument.

Section 23. That § 57A-3-401 be AMENDED:

57A-3-401. ~~(a)~~ A person is not liable on an instrument unless (i) the person signed the instrument, or (ii) the person is represented by an agent or representative who signed the instrument and the signature is binding on the represented person under § 57A-3-402.

~~(b) A signature may be made (i) manually or by means of a device or machine, and (ii) by the use of any name, including a trade or assumed name, or by a word, mark, or symbol executed or adopted by a person with present intention to authenticate a writing.~~

Section 24. That § 57A-3-604 be AMENDED:

57A-3-604. (a) A person entitled to enforce an instrument, with or without consideration, may discharge the obligation of a party to pay the instrument (i) by an intentional voluntary act, such as surrender of the instrument to the party, destruction, mutilation, or cancellation of the instrument, cancellation or striking out of the party's signature, or the addition of words to the instrument indicating discharge, or (ii) by agreeing not to sue or otherwise renouncing rights against the party by a signed ~~writing~~record. The obligation of a party to pay a check is not discharged solely by destruction of the check in connection with a process in which information is extracted from the check and an image of the check is made and, subsequently, the information and image are transmitted for payment.

(b) Cancellation or striking out of an indorsement pursuant to subsection (a) does not affect the status and rights of a party derived from the indorsement.

Section 25. That § 57A-4A-103 be AMENDED:

57A-4A-103. (a) In this chapter:

(1) "Beneficiary" means the person to be paid by the beneficiary's bank.

(2) "Beneficiary's bank" means the bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account.

(3) "Payment order" means an instruction of a sender to a receiving bank, transmitted orally, ~~electronically, or in writing~~or in a record, to pay, or to cause another bank to pay, a fixed or determinable amount of money to a beneficiary if:

(i) ~~the~~The instruction does not state a condition to payment to the beneficiary other than time of payment,

(ii) ~~the~~The receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender, and

(iii) ~~the~~The instruction is transmitted by the sender directly to the receiving bank or to an agent, funds-transfer system, or communication system for transmittal to the receiving bank.

(4) "Receiving bank" means the bank to which the sender's instruction is addressed.

(5) "Sender" means the person giving the instruction to the receiving bank.

(b) If an instruction complying with ~~subsection (a)(1)~~subsection (a)(3) is to make more than one payment to a beneficiary, the instruction is a separate payment order with respect to each payment.

(c) A payment order is issued when it is sent to the receiving bank.

Section 26. That § 57A-4A-201 be AMENDED:

57A-4A-201. "Security procedure" means a procedure established by agreement of a customer and a receiving bank for the purpose of (i) verifying that a payment order or communication amending or cancelling a payment order is that of the customer, or (ii) detecting error in the transmission or the content of the payment order or communication. A security procedure may impose an obligation on the receiving bank or the customer and may require the use of algorithms or other codes, identifying words~~, or~~ numbers, symbols, sounds, biometrics, encryption, callback procedures or similar security devices. Comparison of a signature on a payment order or communication with an authorized specimen signature of the customer or requiring a payment order to be sent from a known email address, IP address, or telephone number is not by itself a security procedure.

Section 27. That § 57A-4A-202 be AMENDED:

57A-4A-202. (a) A payment order received by the receiving bank is the authorized order of the person identified as sender if that person authorized the order or is otherwise bound by it under the law of agency.

(b) If a bank and its customer have agreed that the authenticity of payment orders issued to the bank in the name of the customer as sender will be verified pursuant to a security procedure, a payment order received by the receiving bank is effective as the order of the customer, whether or not authorized, if (i) the security procedure is a commercially reasonable method of providing security against unauthorized payment orders, and (ii) the bank proves that it accepted the payment order in good faith and in compliance with the bank's obligations under the security procedure and any ~~written~~ agreement or instruction of the customer, evidenced by a record, restricting acceptance of payment orders issued in the name of the customer. The bank is not required to follow an instruction that violates ~~a written~~an agreement with the customer, evidenced by a record, or notice of which is not received at a time and in a manner affording the bank a reasonable opportunity to act on it before the payment order is accepted.

(c) Commercial reasonableness of a security procedure is a question of law to be determined by considering the wishes of the customer expressed to the bank, the circumstances of the customer known to the bank, including the size, type and frequency of payment orders normally issued by the customer to the bank, alternative security procedures offered to the customer and security procedures in general use by customers and receiving banks similarly situated. A security procedure is deemed to be commercially reasonable if (i) the security procedure was chosen by the customer after the bank offered, and the customer refused, a security procedure that was commercially reasonable for that customer, and (ii) the customer expressly agreed in ~~writing~~a record to be bound by any payment order, whether or not authorized, issued in its name and accepted by the bank in compliance with the bank's obligations under the security procedure chosen by the customer.

(d) The term "sender" in this chapter includes the customer in whose name a payment order is issued if the order is the authorized order of the customer under subsection (a), or it is effective as the order of the customer under subsection (b).

(e) This section applies to amendments and cancellations of payment orders to the same extent it applies to payment orders.

(f) Except as provided in this section and in § 57A-4A-203(a)(1), rights and obligations arising under this section or § 57A-4A-203 may not be varied by agreement.

Section 28. That § 57A-4A-203 be AMENDED:

57A-4A-203. (a) If an accepted payment order is not, under § 57A-4A-202(a), an authorized order of a customer identified as sender, but is effective as an order of the customer pursuant to § 57A-4A-202(b), the following rules apply:

(1) By express ~~written~~ agreement evidenced by a record, the receiving bank may limit the extent to which it is entitled to enforce or retain payment of the payment order.

(2) The receiving bank is not entitled to enforce or retain payment of the payment order if the customer proves that the order was not caused, directly or indirectly, by a person (i) entrusted at any time with duties to act for the customer with respect to payment orders or the security procedures, or (ii) who obtained access to transmitting facilities of the customer or who obtained, from a source controlled by the customer and without authority of the receiving bank, information facilitating breach of the security procedure, regardless of how the information was obtained or whether the customer was at fault. Information includes any access device, computer software or the like.

(b) This section applies to amendments of payment orders to the same extent it applies to payment orders.

Section 29. That § 57A-4A-207 be AMENDED:

57A-4A-207. (a) Subject to subsection (b), if, in a payment order received by the beneficiary's bank, the name, bank account number or other identification of the beneficiary refers to a nonexistent or unidentifiable person or account, no person has rights as a beneficiary of the order and acceptance of the order cannot occur.

(b) If a payment order received by the beneficiary's bank identifies the beneficiary both by name and by an identifying or bank account number and the name and number identify different persons, the following rules apply:

(1) Except as otherwise provided in subsection (c), if the beneficiary's bank does not know that the name and number refer to different persons, it may rely on the number as the proper identification of the beneficiary of the order. The beneficiary's bank need not determine whether the name and number refer to the same person.

(2) If the beneficiary's bank pays the person identified by name or knows that the name and number identify different persons, no person has rights as beneficiary except the person paid by the beneficiary's bank if that person was entitled to receive payment from the originator of the funds transfer. If no person has rights as beneficiary, acceptance of the order cannot occur.

(c) If (i) a payment order described in subsection (b) is accepted, (ii) the originator's payment order described the beneficiary inconsistently by name and number, and (iii) the beneficiary's bank pays the person identified by number as permitted by subsection (b)(1), the following rules apply:

(1) If the originator is a bank, the originator is obliged to pay its order.

(2) If the originator is not a bank and proves that the person identified by number was not entitled to receive payment from the originator, the originator is not obliged to pay its order unless the originator's bank proves that the originator, before acceptance of the originator's order, had notice that payment of a payment order issued by the originator might be made by the beneficiary's bank on the basis of an identifying or bank account number even if it identifies a person different from the named beneficiary. Proof of notice may be made by any admissible evidence. The originator's bank satisfies the burden of proof if it proves that the originator, before the payment order was accepted, signed a ~~writing~~record stating the information to which the notice relates.

(d) In a case governed by subsection (b)(1), if the beneficiary's bank rightfully pays the person identified by number and that person was not entitled to receive payment from the originator, the amount paid may be recovered from that person to the extent allowed by the law governing mistake and restitution as follows:

(1) If the originator is obliged to pay its payment order as stated in subsection (c), the originator has the right to recover.

(2) If the originator is not a bank and is not obliged to pay its payment order, the originator's bank has the right to recover.

Section 30. That § 57A-4A-208 be AMENDED:

57A-4A-208. (a) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank only by an identifying number.

(1) The receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank and need not determine whether the number identifies a bank.

(2) The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(b) This subsection applies to a payment order identifying an intermediary bank or the beneficiary's bank both by name and an identifying number if the name and number identify different persons.

(1) If the sender is a bank, the receiving bank may rely on the number as the proper identification of the intermediary or beneficiary's bank if the receiving bank, when it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person or whether the number refers to a bank. The sender is obliged to compensate the receiving bank for any loss and expenses incurred by the receiving bank as a result of its reliance on the number in executing or attempting to execute the order.

(2) If the sender is not a bank and the receiving bank proves that the sender, before the payment order was accepted, had notice that the receiving bank might rely on the number as the proper identification of the intermediary or beneficiary's bank even if it identifies a person different from the bank identified by name, the rights and obligations of the sender and the receiving bank are governed by subsection (b)(1), as though the sender were a bank. Proof of notice may be made by any admissible evidence. The receiving bank satisfies the burden of proof if it proves that the sender, before the payment order was accepted, signed a ~~writing~~record stating the information to which the notice relates.

(3) Regardless of whether the sender is a bank, the receiving bank may rely on the name as the proper identification of the intermediary or beneficiary's bank if the receiving bank, at the time it executes the sender's order, does not know that the name and number identify different persons. The receiving bank need not determine whether the name and number refer to the same person.

(4) If the receiving bank knows that the name and number identify different persons, reliance on either the name or the number in executing the sender's payment order is a breach of the obligation stated in § 57A-4A-302(a)(1).

Section 31. That § 57A-4A-210 be AMENDED:

57A-4A-210. (a) A payment order is rejected by the receiving bank by a notice of rejection transmitted to the sender orally~~, electronically~~ or in ~~writing~~a record. A notice of rejection need not use any particular words and is sufficient if it indicates that the receiving bank is rejecting the order or will not execute or pay the order. Rejection is effective when the notice is given if transmission is by a means that is reasonable in the circumstances. If notice of rejection is given by a means that is not reasonable, rejection is effective when the notice is received. If an agreement of the sender and receiving bank establishes the means to be used to reject a payment order, (i) any means complying with the agreement is reasonable and (ii) any means not complying is not reasonable unless no significant delay in receipt of the notice resulted from the use of the noncomplying means.

(b) This subsection applies if a receiving bank other than the beneficiary's bank fails to execute a payment order despite the existence on the execution date of a withdrawable credit balance in an authorized account of the sender sufficient to cover the order. If the sender does not receive notice of rejection of the order on the execution date and the authorized account of the sender does not bear interest, the bank is obliged to pay interest to the sender on the amount of the order for the number of days elapsing after the execution date to the earlier of the day the order is canceled pursuant to § 57A-4A-211(d) or the day the sender

receives notice or learns that the order was not executed, counting the final day of the period as an elapsed day. If the withdrawable credit balance during that period falls below the amount of the order, the amount of interest is reduced accordingly.

(c) If a receiving bank suspends payments, all unaccepted payment orders issued to it are deemed rejected at the time the bank suspends payments.

(d) Acceptance of a payment order precludes a later rejection of the order. Rejection of a payment order precludes a later acceptance of the order.

Section 32. That § 57A-4A-211 be AMENDED:

57A-4A-211. (a) A communication of the sender of a payment order cancelling or amending the order may be transmitted to the receiving bank orally~~,~~ ~~electronically~~ or in ~~writing~~a record. If a security procedure is in effect between the sender and the receiving bank, the communication is not effective to cancel or amend the order unless the communication is verified pursuant to the security procedure or the bank agrees to the cancellation or amendment.

(b) Subject to subsection (a), a communication by the sender cancelling or amending a payment order is effective to cancel or amend the order if notice of the communication is received at a time and in a manner affording the receiving bank a reasonable opportunity to act on the communication before the bank accepts the payment order.

(c) After a payment order has been accepted, cancellation or amendment of the order is not effective unless the receiving bank agrees or a funds-transfer system rule allows cancellation or amendment without agreement of the bank.

(1) With respect to a payment order accepted by a receiving bank other than the beneficiary's bank, cancellation or amendment is not effective unless a conforming cancellation or amendment of the payment order issued by the receiving bank is also made.

(2) With respect to a payment order accepted by the beneficiary's bank, cancellation or amendment is not effective unless the order was issued in execution of an unauthorized payment order, or because of a mistake by a sender in the funds transfer which resulted in the issuance of a payment order (i) that is a duplicate of a payment order previously issued by the sender, (ii) that orders payment to a beneficiary not entitled to receive payment from the originator, or (iii) that orders payments in an amount greater than the amount the beneficiary was entitled to receive from the originator. If the payment order is canceled or amended, the beneficiary's bank is entitled to recover from the beneficiary any amount paid to the beneficiary to the extent allowed by the law governing mistake and restitution.

(d) An unaccepted payment order is canceled by operation of law at the close of the fifth funds-transfer business day of the receiving bank after the execution date or payment date of the order.

(e) A canceled payment order cannot be accepted. If an accepted payment order is canceled, the acceptance is nullified and no person has any right or obligation based on the acceptance. Amendment of a payment order is deemed to be cancellation of the original order at the time of amendment and issue of a new payment order in the amended form at the same time.

(f) Unless otherwise provided in an agreement of the parties or in a funds-transfer system rule, if the receiving bank, after accepting a payment order, agrees to cancellation or amendment of the order by the sender or is bound by a

funds-transfer system rule allowing cancellation or amendment without the bank's agreement, the sender, whether or not cancellation or amendment is effective, is liable to the bank for any loss and expenses, including reasonable attorney's fees, incurred by the bank as a result of the cancellation or amendment or attempted cancellation or amendment.

(g) A payment order is not revoked by the death or legal incapacity of the sender unless the receiving bank knows of the death or of an adjudication of incapacity by a court of competent jurisdiction and has reasonable opportunity to act before acceptance of the order.

(h) A funds-transfer system rule is not effective to the extent it conflicts with subsection (c)(2).

Section 33. That § 57A-4A-305 be AMENDED:

57A-4A-305. (a) If a funds transfer is completed but execution of a payment order by the receiving bank in breach of § 57A-4A-302 results in delay in payment to the beneficiary, the bank is obliged to pay interest to either the originator or the beneficiary of the funds transfer for the period of delay caused by the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(b) If execution of a payment order by a receiving bank in breach of § 57A-4A-302 results in (i) noncompletion of the funds transfer, (ii) failure to use an intermediary bank designated by the originator, or (iii) issuance of a payment order that does not comply with the terms of the payment order of the originator, the bank is liable to the originator for its expenses in the funds transfer and for incidental expenses and interest losses, to the extent not covered by subsection (a), resulting from the improper execution. Except as provided in subsection (c), additional damages are not recoverable.

(c) In addition to the amounts payable under subsection (a) and (b), damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record.

(d) If a receiving bank fails to execute a payment order it was obliged by express agreement to execute, the receiving bank is liable to the sender for its expenses in the transaction and for incidental expenses and interest losses resulting from the failure to execute. Additional damages, including consequential damages, are recoverable to the extent provided in an express ~~written~~ agreement of the receiving bank, evidenced by a record, but are not otherwise recoverable.

(e) Reasonable attorney's fees are recoverable if demand for compensation under subsection (a) or (b) is made and refused before an action is brought on the claim. If a claim is made for breach of an agreement under subsection (d) and the agreement does not provide for damages, reasonable attorney's fees are recoverable if demand for compensation under subsection (d) is made and refused before an action is brought on the claim.

(f) Except as stated in this section, the liability of a receiving bank under subsections (a) and (b) may not be varied by agreement.

Section 34. That § 57A-5-104 be AMENDED:

57A-5-104. A letter of credit, confirmation, advice, transfer, amendment, or cancellation may be issued in any form that is a signed record ~~and is authenticated (i) by a signature or (ii) in accordance with the agreement of the parties or the standard practice referred to in § 57A-5-108(e)~~.

Section 35. That § 57A-5-116 be AMENDED:

57A-5-116. (a) The liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction chosen by an agreement in the form of a record signed ~~or otherwise authenticated~~ by the affected parties ~~in the manner provided in § 57A-5-104~~ or by a provision in the person's letter of credit, confirmation, or other undertaking. The jurisdiction whose law is chosen need not bear any relation to the transaction.

(b) Unless subsection (a) applies, the liability of an issuer, nominated person, or adviser for action or omission is governed by the law of the jurisdiction in which the person is located. The person is considered to be located at the address indicated in the person's undertaking. If more than one address is indicated, the person is considered to be located at the address from which the person's undertaking was issued.

(c) For the purpose of jurisdiction, choice of law, and recognition of interbranch letters of credit, but not enforcement of a judgment, all branches of a bank are considered separate juridical entities and a bank is considered to be located at the place where its relevant branch is considered to be located under ~~this~~ subsection (d).

(d) A branch of a bank is considered to be located at the address indicated in the branch's undertaking. If more than one address is indicated, the branch is considered to be located at the address from which the undertaking was issued.

~~(c)~~(e) Except as otherwise provided in this subsection, the liability of an issuer, nominated person, or adviser is governed by any rules of custom or practice, such as the Uniform Customs and Practice for Documentary Credits, to which the letter of credit, confirmation, or other undertaking is expressly made subject. If (i) this chapter would govern the liability of an issuer, nominated person, or adviser under subsection (a) or (b), (ii) the relevant undertaking incorporates rules of custom or practice, and (iii) there is conflict between this chapter and those rules as applied to that undertaking, those rules govern except to the extent of any conflict with the nonvariable provisions specified in § 57A-5-103(c).

~~(d)~~(f) If there is conflict between this chapter and chapter 57A-3, 57A-4, 57A-4A, or 57A-9, this chapter governs.

~~(e)~~(g) The forum for settling disputes arising out of an undertaking within this chapter may be chosen in the manner and with the binding effect that governing law may be chosen in accordance with subsection (a).

Section 36. That § 57A-7-102 be AMENDED:

57A-7-102. (a) In this chapter, unless the context otherwise requires:

(1) "Bailee" means a person that by a warehouse receipt, bill of lading, or other document of title acknowledges possession of goods and contracts to deliver them.

(2) "Carrier" means a person that issues a bill of lading.

(3) "Consignee" means a person named in a bill of lading to which or to whose order the bill promises delivery.

(4) "Consignor" means a person named in a bill of lading as the person from which the goods have been received for shipment.

(5) "Delivery order" means a record that contains an order to deliver goods directed to a warehouse, carrier, or other person that in the ordinary course of business issues warehouse receipts or bills of lading.

(6) "Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(7) "Goods" means all things that are treated as movable for the purposes of a contract for storage or transportation.

(8) "Issuer" means a bailee that issues a document of title or, in the case of an unaccepted delivery order, the person that orders the possessor of goods to deliver. The term includes a person for which an agent or employee purports to act in issuing a document if the agent or employee has real or apparent authority to issue documents, even if the issuer did not receive any goods, the goods were misdescribed, or in any other respect the agent or employee violated the issuer's instructions.

(9) "Person entitled under the document" means the holder, in the case of a negotiable document of title, or the person to which delivery of the goods is to be made by the terms of, or pursuant to instructions in a record under, a nonnegotiable document of title.

(10) ~~"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.~~Reserved.

(11) ~~"Sign" means, with present intent to authenticate or adopt a record:~~

~~(A) To execute or adopt a tangible symbol; or~~

~~(B) To attach to or logically associate with the record an electronic sound, symbol, or process.~~Reserved.

(12) "Shipper" means a person that enters into a contract of transportation with a carrier.

(13) "Warehouse" means a person engaged in the business of storing goods for hire.

(b) Definitions in other chapters applying to this chapter and the sections in which they appear are:

(1) "Contract for sale~~",~~" § 57A-2-106.

(2) "Lessee in ordinary course of business~~",~~" § 57A-2A-103.

(3) "'Receipt"' of goods," § 57A-2-103.

(c) In addition, chapter 57A-1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 37. That § 57A-7-106 be AMENDED:

57A-7-106. (a) A person has control of an electronic document of title if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred.

(b) A system satisfies subsection (a), and a person ~~is deemed to have~~has control of an electronic document of title, if the document is created, stored, and ~~assigned~~transferred in ~~such~~ a manner that:

(1) A single authoritative copy of the document exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the document was issued; or

(B) If the authoritative copy indicates that the document has been transferred, the person to which the document was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or amendments that add or change an identified ~~assignee~~transferee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a), and a person has control of an electronic document of title, if an authoritative electronic copy of the document, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) Enables the person readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the person to which each authoritative electronic copy was issued or transferred; and

(3) Gives the person exclusive power, subject to subsection (d), to:

(A) Prevent others from adding or changing the person to which each authoritative electronic copy has been issued or transferred; and

(B) Transfer control of each authoritative electronic copy.

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) The authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded, limits the use of the document of title or has a protocol that is programmed to cause a change, including a transfer or loss of control; or

(2) The power is shared with another person.

(e) A power of a person is not shared with another person under subsection (d)(2) and the person's power is not exclusive if:

(1) The person can exercise the power only if the power also is exercised by the other person; and

(2) The other person:

(A) Can exercise the power without exercise of the power by the person; or

(B) Is the transferor to the person of an interest in the document of title.

(f) If a person has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A person has control of an electronic document of title if another person, other than the transferor to the person of an interest in the document:

(1) Has control of the document and acknowledges that it has control on behalf of the person; or

(2) Obtains control of the document after having acknowledged that it will obtain control of the document on behalf of the person.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of the person.

(i) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter or chapter 57A-9 otherwise provides, the person does not owe any duty to another person and is not required to confirm the acknowledgement to any other person.

Section 38. That § 57A-8-102 be AMENDED:

57A-8-102. (a) In this chapter:

(1) "Adverse claim" means a claim that a claimant has a property interest in a financial asset and that it is a violation of the rights of the claimant for another person to hold, transfer, or deal with the financial asset.

(2) "Bearer form," as applied to a certificated security, means a form in which the security is payable to the bearer of the security certificate according to its terms but not by reason of an indorsement.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws, but without excluding a bank acting in that capacity.

(4) "Certificated security" means a security that is represented by a certificate.

(5) "Clearing corporation" means:

(i) A person that is registered as a "clearing agency" under the federal securities laws;

(ii) A federal reserve bank; or

(iii) Any other person that provides clearance or settlement services with respect to financial assets that would require it to register as a clearing agency under the federal securities laws but for an exclusion or exemption from the registration requirement, if its activities as a clearing corporation, including promulgation of rules, are subject to regulation by a federal or state governmental authority.

(6) "Communicate" means to:

(i) Send a signed ~~writing~~record; or

(ii) Transmit information by any mechanism agreed upon by the persons transmitting and receiving the information.

(7) "Entitlement holder" means a person identified in the records of a securities intermediary as the person having a security entitlement against the securities intermediary. If a person acquires a security entitlement by virtue of § 57A-8-501(b)(2) or (3), that person is the entitlement holder.

(8) "Entitlement order" means a notification communicated to a securities intermediary directing transfer or redemption of a financial asset to which the entitlement holder has a security entitlement.

(9) "Financial asset," except as otherwise provided in § 57A-8-103, means:

(i) A security;

(ii) An obligation of a person or a share, participation, or other interest in a person or in property or an enterprise of a person, which is, or is of a type, dealt in or traded on financial markets, or which is recognized in any area in which it is issued or dealt in as a medium for investment; or

(iii) Any property that is held by a securities intermediary for another person in a securities account if the securities intermediary has expressly agreed with the other person that the property is to be treated as a financial asset under this chapter.

As context requires, the term means either the interest itself or the means by which a person's claim to it is evidenced, including a certificated or uncertificated security, a security certificate, or a security entitlement.

(10) (Reserved.)

(11) "Indorsement" means a signature that alone or accompanied by other words is made on a security certificate in registered form or on a separate document for the purpose of assigning, transferring, or redeeming the security or granting a power to assign, transfer, or redeem it.

(12) "Instruction" means a notification communicated to the issuer of an uncertificated security which directs that the transfer of the security be registered or that the security be redeemed.

(13) "Registered form," as applied to a certificated security, means a form in which:

(i) The security certificate specifies a person entitled to the security; and

(ii) A transfer of the security may be registered upon books maintained for that purpose by or on behalf of the issuer, or the security certificate so states.

(14) "Securities intermediary" means:

(i) A clearing corporation; or

(ii) A person, including a bank or broker, that in the ordinary course of its business maintains securities accounts for others and is acting in that capacity.

(15) "Security," except as otherwise provided in § 57A-8-103, means an obligation of an issuer or a share, participation, or other interest in an issuer or in property or an enterprise of an issuer:

(i) Which is represented by a security certificate in bearer or

registered form, or the transfer of which may be registered upon books maintained for that purpose by or on behalf of the issuer;

(ii) Which is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations; and

(iii) Which:

(A) Is, or is of a type, dealt in or traded on securities exchanges or securities markets; or

(B) Is a medium for investment and by its terms expressly provides that it is a security governed by this chapter.

(16) "Security certificate" means a certificate representing a security.

(17) "Security entitlement" means the rights and property interest of an entitlement holder with respect to a financial asset specified in Part 5.

(18) "Uncertificated security" means a security that is not represented by a certificate.

(b) ~~Other~~The following definitions ~~applying to~~ in this chapter and ~~the sections in which they appear are~~other chapters apply to this chapter:

Appropriate person, § 57A-8-107.

Control, § 57A-8-106.

Controllable account, § 57A-9-102.

Controllable electronic record, Section 93 of this Act.

Controllable payment intangible, § 57A-9-102.

Delivery, § 57A-8-301.

Investment company security, § 57A-8-103.

Issuer, § 57A-8-201.

Overissue, § 57A-8-210.

Protected purchaser, § 57A-8-303.

Securities account, § 57A-8-501.

(c) In addition, chapter 57A-1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

(d) The characterization of a person, business, or transaction for purposes of this chapter does not determine the characterization of the person, business, or transaction for purposes of any other law, regulation, or rule.

Section 39. That § 57A-8-103 be AMENDED:

57A-8-103. In this chapter:

(a) A share or similar equity interest issued by a corporation, business trust, joint stock company, or similar entity is a security.

(b) An "investment company security" is a security. "Investment company security" means a share or similar equity interest issued by an entity that is registered as an investment company under the federal investment company laws, an interest in a unit investment trust that is so registered, or a face-amount certificate issued by a face-amount certificate company that is so registered.

Investment company security does not include an insurance policy or endowment policy or annuity contract issued by an insurance company.

(c) An interest in a partnership or limited liability company is not a security unless it is dealt in or traded on securities exchanges or in securities markets, its terms expressly provide that it is a security governed by this chapter, or it is an investment company security. However, an interest in a partnership or limited liability company is a financial asset if it is held in a securities account.

(d) A writing that is a security certificate is governed by this chapter and not by chapter 57A-3, even though it also meets the requirements of that chapter. However, a negotiable instrument governed by chapter 57A-3 is a financial asset if it is held in a securities account.

(e) An option or similar obligation issued by a clearing corporation to its participants is not a security, but is a financial asset.

(f) A commodity contract, as defined in § 57A-9-102(a)(15), is not a security or a financial asset;

(g) A document of title, as defined in subdivision 57A-1-201(16), is not a financial asset unless § 57A-8-102(a)(9)(iii) applies.

(h) A controllable account, controllable electronic record, or controllable payment intangible is not a financial asset unless § 57A-8-102(a)(9)(iii) applies.

Section 40. That § 57A-8-106 be AMENDED:

57A-8-106. (a) A purchaser has "control" of a certificated security in bearer form if the certificated security is delivered to the purchaser.

(b) A purchaser has "control" of a certificated security in registered form if the certificated security is delivered to the purchaser, and:

(1) The certificate is indorsed to the purchaser or in blank by an effective indorsement; or

(2) The certificate is registered in the name of the purchaser, upon original issue or registration of transfer by the issuer.

(c) A purchaser has "control" of an uncertificated security if:

(1) The uncertificated security is delivered to the purchaser; or

(2) The issuer has agreed that it will comply with instructions originated by the purchaser without further consent by the registered owner.

(d) A purchaser has "control" of a security entitlement if:

(1) The purchaser becomes the entitlement holder; or

(2) The securities intermediary has agreed that it will comply with entitlement orders originated by the purchaser without further consent by the entitlement holder; or

(3) Another person, ~~has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser.~~other than the transferor to the purchaser of an interest in the security entitlement:

(A) Has control of the security entitlement and acknowledges that it has control on behalf of the purchaser; or

(B) Obtains control of the security entitlement after having acknowledged that it will obtain control of the security entitlement on behalf of the purchaser.

(e) If an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary, the securities intermediary has control.

(f) A purchaser who has satisfied the requirements of subsection (c) or (d) has control, even if the registered owner in the case of subsection (c) or the entitlement holder in the case of subsection (d) retains the right to make substitutions for the uncertificated security or security entitlement, to originate instructions or entitlement orders to the issuer or securities intermediary, or otherwise to deal with the uncertificated security or security entitlement.

(g) An issuer or a securities intermediary may not enter into an agreement of the kind described in subsection (c)(2) or (d)(2) without the consent of the registered owner or entitlement holder, but an issuer or a securities intermediary is not required to enter into such an agreement even though the registered owner or entitlement holder so directs. An issuer or securities intermediary that has entered into such an agreement is not required to confirm the existence of the agreement to another party unless requested to do so by the registered owner or entitlement holder.

(h) A person that has control under this section is not required to acknowledge that it has control on behalf of a purchaser.

(i) If a person acknowledges that it has or will obtain control on behalf of a purchaser, unless the person otherwise agrees or law other than this chapter or chapter 57A-9 otherwise provides, the person does not owe any duty to the purchaser and is not required to confirm the acknowledgement to any other person.

Section 41. That § 57A-8-110 be AMENDED:

57A-8-110. (a) The local law of the issuer's jurisdiction, as specified in subsection (d), governs:

(1) The validity of a security;

(2) The rights and duties of the issuer with respect to registration of transfer;

(3) The effectiveness of registration of transfer by the issuer;

(4) Whether the issuer owes any duties to an adverse claimant to a security; and

(5) Whether an adverse claim can be asserted against a person to whom transfer of a certificated or uncertificated security is registered or a person who obtains control of an uncertificated security.

(b) The local law of the securities intermediary's jurisdiction, as specified in subsection (e), governs:

(1) Acquisition of a security entitlement from the securities intermediary;

(2) The rights and duties of the securities intermediary and entitlement holder arising out of a security entitlement;

(3) Whether the securities intermediary owes any duties to an adverse claimant to a security entitlement; and

(4) Whether an adverse claim can be asserted against a person who acquires a security entitlement from the securities intermediary or a person who

purchases a security entitlement or interest therein from an entitlement holder.

(c) The local law of the jurisdiction in which a security certificate is located at the time of delivery governs whether an adverse claim can be asserted against a person to whom the security certificate is delivered.

(d) "Issuer's jurisdiction" means the jurisdiction under which the issuer of the security is organized or, if permitted by the law of that jurisdiction, the law of another jurisdiction specified by the issuer. An issuer organized under the law of this State may specify the law of another jurisdiction as the law governing the matters specified in subsection (a)(2) through (5).

(e) The following rules determine a "securities intermediary's jurisdiction" for purposes of this section:

(1) If an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the entitlement holder's account is located.

(5) If none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which the chief executive office of the securities intermediary is located.

(f) A securities intermediary's jurisdiction is not determined by the physical location of certificates representing financial assets, or by the jurisdiction in which is organized the issuer of the financial asset with respect to which an entitlement holder has a security entitlement, or by the location of facilities for data processing or other record keeping concerning the account.

(g) The local law of the issuer's jurisdiction or the securities intermediary's jurisdiction governs a matter or transaction specified in subsection (a) or (b) even if the matter or transaction does not bear any relation to the jurisdiction.

Section 42. That § 57A-8-303 be AMENDED:

57A-8-303. (a) "Protected purchaser" means a purchaser of a certificated or uncertificated security, or of an interest therein, who:

(1) Gives value;

(2) Does not have notice of any adverse claim to the security; and

(3) Obtains control of the certificated or uncertificated security.

(b) ~~In addition to acquiring the rights of a purchaser, a~~A protected purchaser also acquires its interest in the security free of any adverse claim.

Section 43. That § 57A-9-102 be AMENDED:

57A-9-102. (a) In this chapter:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account," except as used in "account for," "account statement," "account to," "commodity account," in paragraph (14), "customer's account," "deposit account," in paragraph (29), "on account of," and "statement of account," means a right to payment of a monetary obligation, whether or not earned by performance, (i) for property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of, (ii) for services rendered or to be rendered, (iii) for a policy of insurance issued or to be issued, (iv) for a secondary obligation incurred or to be incurred, (v) for energy provided or to be provided, (vi) for the use or hire of a vessel under a charter or other contract, (vii) arising out of the use of a credit or charge card or information contained on or for use with the card, or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes controllable accounts and health-care-insurance receivables. The term does not include (i) ~~rights to payment evidenced by~~ chattel paper ~~or an instrument~~, (ii) commercial tort claims, (iii) deposit accounts, (iv) investment property, (v) letter-of-credit rights or letters of credit, or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card, or (vii) rights to payment evidenced by an instrument.

(3) "Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the negotiable instrument ~~constitutes part of~~evidences chattel paper.

(4) "Accounting," except as used in "accounting for," means a record:

(A) ~~Authenticated~~Signed by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than 35 days earlier or 35 days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, other than a security interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas, or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

(7) ~~"Authenticate" means:~~

~~(A) To sign; or~~

~~(B) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol, or process.~~(Reserved.)

(7A) "Assignee," except as used in "assignee for benefits of creditors," means a person (i) in whose favor a security interest that secures an obligation is created or provided for under a security agreement, whether or not the obligation is outstanding or (ii) to which an account, chattel paper, payment intangible, or promissory note has been sold. The term includes a person to which a security interest has been transferred by a secured party.

(7B) "Assignor" means a person that (i) under a security agreement creates or provides for a security interest that secures an obligation or (ii) sells an account, chattel paper, payment intangible, or promissory note. The term includes a secured party that has transferred a security interest to another person.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts, or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means: ~~a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include (i) charters or other contracts involving the use or hire of a vessel or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.~~

(A) A right to payment of a monetary obligation secured by specific goods, if the right to payment and security agreement are evidenced by a record; or

(B) A right to payment of a monetary obligation owed by a lessee under a lease agreement with respect to specific goods and a monetary obligation owed by the lessee in connection with the transaction giving rise to the lease, if:

(i) The right to payment and lease agreement are evidenced by a record; and

(ii) The predominant purpose of the transaction giving rise to the lease was to give the lessee the right to possession and use of the goods.

The term does not include a right to payment arising out of a charter or other contract involving the use or hire of a vessel or a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on

a commodity futures contract, a commodity option, or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange, or market, and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family, or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

(26) "Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(27A) "Controllable account" means an account evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control, under section 96 of this Act, of the controllable electronic record.

(27B) "Controllable payment intangible" means a payment intangible evidenced by a controllable electronic record that provides that the account debtor undertakes to pay the person that has control, under section 96 of this Act, of the controllable electronic record.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in § 57A-7-201(b).

(31) ~~"Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.~~(Reserved.)

(31A) "Electronic money" means money in an electronic form.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products, or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing, or to be grown, including:

(i) Crops produced on trees, vines, and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to § 57A-9-519(a).

(37) "Filing office" means an office designated in § 57A-9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to § 57A-9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying § 57A-9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes controllable electronic records, payment intangibles, and software.

(43) ~~"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.~~(Reserved.)

(44) "Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-

of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a state, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include (i) investment property, (ii) letters of credit, ~~or~~ (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card, or (iv) writings that evidence chattel paper.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process, or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

(50) "Jurisdiction of organization" with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or 40 body feet or more in length, or, when erected on site, is 320 or more

square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(54A) "Money" has the meaning in § 57A-1-201(b)(24), but does not include (i) a deposit account or (ii) money in an electronic form that cannot be subjected to control under section 45 of this Act.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under § 57A-9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means (i) money, (ii) money's worth in property, services, or new credit, or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral, (i) owes payment or other performance of the obligation, (ii) has provided property other than the collateral to secure payment or other performance of the obligation, or (iii) is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor," except as used in § 57A-9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under § 57A-9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation. The term includes a controllable payment intangible.

(62) "Person related to," with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister, or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to," with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by, or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B), or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C), or (D) and shares the same home with the individual.

(64) "Proceeds," except as used in § 57A-9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

(65) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(66) "Proposal" means a record ~~authenticated~~signed by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to §§ 57A-9-620, 57A-9-621, and 57A-9-622.

(67) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt or other securities are issued; and

(B) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(68) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a

state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the original record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which amends or restates the name of the organization.

(69) "Pursuant to commitment," with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(70) "Record," except as used in "for record," "of record," "record or legal title," and "record owner," means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(71) "Registered organization" means an organization organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(72) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

(73) "Secured party" means:

(A) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under §§ 57A-2-401, 57A-2-505, 57A-2-711(3), 57A-2A-508(5), 57A-4-210, or 57A-5-118.

(74) "Security agreement" means an agreement that creates or provides for a security interest.

(75) ~~"Send," in connection with a record or notification, means:~~

~~(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or~~

~~(B) To cause the record or notification to be received within the time that it would have been received if properly sent under subparagraph (A).~~(Reserved.)

(76) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(77) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(78) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

(79) ~~"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.~~(Reserved.)

(79A) "Tangible money" means money in a tangible form.

(80) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(81) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway, or trolley bus;

(B) Transmitting communications electrically, electromagnetically, or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other sections apply to this chapter:

"Applicant." § 57A-5-102.

"Broker." § 57A-8-102.

"Certificated security." § 57A-8-102.

"Check." § 57A-3-104.

"Clearing corporation." § 57A-8-102.

"Contract for sale." § 57A-2-106.

"Control" (with respect to a document of title). § 57A-7-106.

"Controllable electronic record." Section 93 of this Act.

"Customer." § 57A-4-104.

"Entitlement holder." § 57A-8-102.

"Financial asset." § 57A-8-102.

"Holder in due course." § 57A-3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right). § 57A-5-102.

"Issuer" (with respect to a security). § 57A-8-201.

"Lease." § 57A-2A-103.

"Lease agreement." § 57A-2A-103.

"Lease contract." § 57A-2A-103.

"Leasehold interest." § 57A-2A-103.

"Lessee." § 57A-2A-103.

"Lessee in ordinary course of business." § 57A-2A-103.

"Lessor." § 57A-2A-103.

"Lessor's residual interest." § 57A-2A-103.

"Letter of credit." § 57A-5-102.

"Merchant." § 57A-2-104.

"Negotiable instrument." § 57A-3-104.

"Nominated person." § 57A-5-102.

"Note." § 57A-3-104.

"Proceeds of a letter of credit." § 57A-5-114.

"Protected purchaser." § 57A-8-303.

"Prove." § 57A-3-103.

"Qualifying purchaser." Section 93 of this Act.

"Sale." § 57A-2-106.

"Securities account." § 57A-8-501.

"Securities intermediary." § 57A-8-102.

"Security." § 57A-8-102.

"Security certificate." § 57A-8-102.

"Security entitlement." § 57A-8-102.

"Uncertificated security." § 57A-8-102.

(c) SDCL chapter 57A-1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 44. That § 57A-9-104 be AMENDED:

57A-9-104. (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in ~~an authenticated~~a signed record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; ~~or~~

(3) The secured party becomes the bank's customer with respect to the deposit account~~.~~; or

(4) Another person, other than the debtor:

(A) Has control of the deposit account and acknowledges that it has control on behalf of the secured party; or

(B) Obtains control of the deposit account after having acknowledged that it will obtain control of the deposit account on behalf of the secured party.

(b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

Section 45. That § 57A-9-105 be AMENDED:

57A-9-105. ~~(a) A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.~~

~~(b) A system satisfies subsection (a) and a secured party has control of electronic chattel paper, if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:~~

~~(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;~~

~~(2) The authoritative copy identifies the secured party as the assignee of the record or records;~~

~~(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;~~

~~(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;~~

~~(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and~~

~~(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.~~

(a) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if a system employed for evidencing the assignment of interests in the chattel paper reliably establishes the purchaser as the person to which the authoritative electronic copy was assigned.

(b) A system satisfies subsection (a) if the record or records evidencing the chattel paper are created, stored, and assigned in a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the purchaser as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the purchaser or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the purchaser;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any amendment of the authoritative copy is readily identifiable as authorized or unauthorized.

(c) A system satisfies subsection (a), and a purchaser has control of an authoritative electronic copy of a record evidencing chattel paper, if the electronic copy, a record attached to or logically associated with the electronic copy, or a system in which the electronic copy is recorded:

(1) Enables the purchaser readily to identify each electronic copy as either an authoritative copy or a nonauthoritative copy;

(2) Enables the purchaser readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as the assignee of the authoritative electronic copy; and

(3) Gives the purchaser exclusive power, subject to subsection (d), to:

(A) Prevent others from adding or changing an identified assignee of the authoritative electronic copy; and

(B) Transfer control of the authoritative electronic copy.

(d) Subject to subsection (e), a power is exclusive under subsection (c)(3)(A) and (B) even if:

(1) The authoritative electronic copy, a record attached to or logically associated with the authoritative electronic copy, or a system in which the authoritative electronic copy is recorded limits the use of the authoritative electronic copy or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) The power is shared with another person.

(e) A power of a purchaser is not shared with another person under subsection (d)(2) and the purchaser's power is not exclusive if:

(1) The purchaser can exercise the power only if the power also is exercised by the other person; and

(2) The other person:

(A) Can exercise the power without exercise of the power by the purchaser; or

(B) Is the transferor to the purchaser of an interest in the chattel paper.

(f) If a purchaser has the powers specified in subsection (c)(3)(A) and (B), the powers are presumed to be exclusive.

(g) A purchaser has control of an authoritative electronic copy of a record evidencing chattel paper if another person, other than the transferor to the purchaser of an interest in the chattel paper:

(1) Has control of the authoritative electronic copy and acknowledges that it has control on behalf of the purchaser; or

(2) Obtains control of the authoritative electronic copy after having acknowledged that it will obtain control of the electronic copy on behalf of the purchaser.

Section 46. That chapter 57A-9 be amended with a NEW SECTION:

(a) A person has control of electronic money if:

(1) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded gives the person:

(A) Power to avail itself of substantially all the benefit from the electronic money; and

(B) Exclusive power, subject to subsection (b), to:

(i) Prevent others from availing themselves of substantially all the benefit from the electronic money; and

(ii) Transfer control of the electronic money to another person or cause another person to obtain control of other electronic money as a result of the transfer of the electronic money; and

(2) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded, enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers under paragraph (1).

(b) Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) The electronic money, a record attached to or logically associated with the electronic money, or a system in which the electronic money is recorded, limits the use of the electronic money or has a protocol programmed to cause a change, including a transfer or loss of control; or

(2) The power is shared with another person.

(c) A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) The person can exercise the power only if the power also is exercised by the other person; and

(2) The other person:

(A) Can exercise the power without exercise of the power by the person; or

(B) Is the transferor to the person of an interest in the electronic money.

(d) If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) A person has control of electronic money if another person, other than the transferor to the person of an interest in the electronic money:

(1) Has control of the electronic money and acknowledges that it has control on behalf of the person; or

(2) Obtains control of the electronic money after having acknowledged that it will obtain control of the electronic money on behalf of the person.

Section 47. That chapter 57A-9 be amended with a NEW SECTION:

(a) A secured party has control of a controllable electronic record as provided in section 96 of this Act.

(b) A secured party has control of a controllable account or controllable payment intangible if the secured party has control of the controllable electronic record that evidences the controllable account or controllable payment intangible.

Section 48. That chapter 57A-9 be amended with a NEW SECTION:

(a) A person that has control under § 57A-9-104, 57A-9-105, or section 45 of this Act is not required to acknowledge that it has control on behalf of another person.

(b) If a person acknowledges that it has or will obtain control on behalf of another person, unless the person otherwise agrees or law other than this chapter otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgement to any other person.

Section 49. That § 57A-9-203 be AMENDED:

57A-9-203. (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has ~~authenticated~~signed a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under § 57A-9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under § 57A-8-301 pursuant to the debtor's security agreement; ~~or~~

(D) The collateral is controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts,

~~electronic chattel paper,~~electronic documents, electric money, investment property, or letter-of-credit rights, ~~or electronic documents,~~ and the secured party has control under § 57A-7-106, 57A-9-104, ~~57A-9-105~~section 45 of this Act, 57A-9-106, 57A-9-107, or ~~57A-7-106~~section 46 of this Act pursuant to the debtor's security agreement~~.~~; or

(E) The collateral is chattel paper and the secured party has possession and control under Section 63 of this Act pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to § 57A-4-210 on the security interest of a collecting bank, § 57A-5-118 on the security interest of a letter-of-credit issuer or nominated person, § 57A-9-110 on a security interest arising under chapter 57A-2 or 57A-2A, and § 57A-9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this chapter or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by § 57A-9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

Section 50. That § 57A-9-204 be AMENDED:

57A-9-204. (a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) ~~A~~Subject to subsection (b.1), a security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within 10 days after the secured party gives value; or

(2) A commercial tort claim.

(b.1) Subsection (b) does not prevent a security interest from attaching:

(1) To consumer goods as proceeds under § 57A-9-315(a) or commingled goods under § 57A-9-336(c);

(2) To a commercial tort claim as proceeds under § 57A-9-315(a); or

(3) Under an after-acquired property clause to property that is proceeds of consumer goods or a commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

Section 51. That § 57A-9-207 be AMENDED:

57A-9-207. (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under § 57A-7-106, 57A-9-104, 57A-9-105, section 45 of this Act, 57A-9-106, 57A-9-107, or ~~57A-7-106~~ section 46 of this Act:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

Section 52. That § 57A-9-208 be AMENDED:

57A-9-208. (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving ~~an authenticated~~a signed demand by the debtor:

(1) A secured party having control of a deposit account under § 57A-9-104(a)(2) shall send to the bank with which the deposit account is maintained ~~an authenticated statement~~a signed record that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under § 57A-9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

~~(3) A secured party, other than a buyer, having control of electronic chattel paper under § 57A-9-105 shall:~~

~~(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;~~

~~(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;~~

(3) A secured party, other than a buyer, having control under § 57A-9-105 of an authoritative electronic copy of a record evidencing chattel paper shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(4) A secured party having control of investment property under § 57A-8-106(d)(2) or 57A-9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity

contract is maintained ~~an authenticated~~a signed record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under § 57A-9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party ~~an authenticated~~a signed release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; ~~and~~

~~(6) A secured party having control of an electronic document shall:~~

~~(A) Give control of the electronic document to the debtor or its designated custodian;~~

~~(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and~~

~~(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.~~

(6) A secured party having control under § 57A-7-106 of an authoritative electronic copy of an electronic document shall transfer control of the electronic copy to the debtor or a person designated by the debtor;

(7) A secured party having control under section 45 of this Act of electronic money shall transfer control of the electronic money to the debtor or a person designated by the debtor; and

(8) A secured party having control under section 96 of this Act of a controllable electronic record, other than a buyer of a controllable account or controllable payment intangible evidenced by the controllable electronic record, shall transfer control of the controllable electronic record to the debtor or a person designated by the debtor.

Section 53. That § 57A-9-209 be AMENDED:

57A-9-209. (a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within 10 days after receiving ~~an authenticated~~a signed demand by the debtor, a secured party shall send to an account debtor that has received notification under § 57A-9-406(a) or section 97 of this Act of an assignment to the secured party as assignee ~~under § 57A-9-406(a) an authenticated~~a signed record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

Section 54. That § 57A-9-210 be AMENDED:

57A-9-210. (a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record ~~authenticated~~signed by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record ~~authenticated~~signed by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record ~~authenticated~~signed by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within 14 days after receipt:

(1) In the case of a request for an accounting, by ~~authenticating~~signing and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by ~~authenticating~~signing and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor ~~an authenticated~~a signed record including a statement to that effect within 14 days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor ~~an authenticated~~a signed record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within 14 days after receipt by sending to the debtor ~~an authenticated~~a signed record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

Section 55. That § 57A-9-301 be AMENDED:

57A-9-301. Except as otherwise provided in §§ 57A-9-303 through ~~57A-9-306~~section 58 of this Act, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while ~~tangible~~ negotiable tangible documents, goods, instruments, or tangible money~~, or tangible chattel paper~~ is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

Section 56. That § 57A-9-304 be AMENDED:

57A-9-304. (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank even if the transaction does not bear any relation to the bank's jurisdiction.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

Section 57. That § 57A-9-305 be AMENDED:

57A-9-305. (a) Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in § 57A-8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in § 57A-8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(5) Paragraphs (2), (3), and (4) apply even if the transaction does not bear any relation to the jurisdiction.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this chapter, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) perfection of a security interest in investment property by filing;

(2) automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

Section 58. That chapter 57A-9 be amended with a NEW SECTION:

(a) Except as provided in subsection (d), if chattel paper is evidenced only by an authoritative electronic copy of the chattel paper or is evidenced by an authoritative electronic copy and an authoritative tangible copy, the local law of the chattel paper's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the chattel paper, even if the transaction does not bear any relation to the chattel paper's jurisdiction.

(b) The following rules determine the chattel paper's jurisdiction under this section:

(1) If the authoritative electronic copy of the record evidencing chattel paper, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this chapter, or title 57A, that jurisdiction is the chattel paper's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that a particular jurisdiction is the chattel paper's jurisdiction for purposes of this section, this chapter, or title 57A, that jurisdiction is the chattel paper's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the authoritative electronic copy, or a record attached to or logically associated with the electronic copy and readily available for review, expressly provides that the chattel paper is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the authoritative electronic copy is recorded are readily available for review and expressly provide that the chattel paper or the system is governed by the law of a particular jurisdiction, that jurisdiction is the chattel paper's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the chattel paper's jurisdiction is the jurisdiction in which the debtor is located.

(c) If an authoritative tangible copy of a record evidences chattel paper and the chattel paper is not evidenced by an authoritative electronic copy, while the authoritative tangible copy of the record evidencing chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(1) Perfection of a security interest in the chattel paper by possession under section 63 of this Act; and

(2) The effect of perfection or nonperfection and the priority of a security interest in the chattel paper.

(d) The local law of the jurisdiction in which the debtor is located governs perfection of a security interest in chattel paper by filing.

Section 59. That chapter 57A-9 be amended with a NEW SECTION:

(a) Except as provided in subsection (b), the local law of the controllable electronic record's jurisdiction specified in section 98 of this Act governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a controllable electronic record and a security interest in a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(b) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in a controllable account, controllable electronic record, or controllable payment intangible by filing; and

(2) Automatic perfection of a security interest in a controllable payment intangible created by a sale of the controllable payment intangible.

Section 60. That § 57A-9-310 be AMENDED:

57A-9-310. (a) Except as otherwise provided in subsection (b) and § 57A-9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under § 57A-9-308(d), (e), (f), or (g);

(2) That is perfected under § 57A-9-309 when it attaches;

(3) In property subject to a statute, regulation, or treaty described in § 57A-9-311(a);

(4) In goods in possession of a bailee which is perfected under § 57A-9-312(d)(1) or (2);

(5) In certificated securities, documents, goods, or instruments which is perfected without filing, control, or possession under § 57A-9-312(e), (f), or (g);

(6) In collateral in the secured party's possession under § 57A-9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under § 57A-9-313;

(8) In controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, ~~electronic chattel paper,~~ investment property, or letter-of-credit rights which is perfected by control under § 57A-9-314;

(8.1) In chattel paper which is perfected by possession and control under section 63 of this Act;

(9) In proceeds which is perfected under § 57A-9-315;

(10) That is perfected under § 57A-9-316; or

(11) Subject to §§ 49-34-11 to 49-34-11.4, inclusive.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this chapter is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

Section 61. That § 57A-9-312 be AMENDED:

57A-9-312. (a) A security interest in chattel paper, ~~negotiable~~

~~documents,~~controllable accounts, controllable electronic records, controllable payment intangibles, instruments, ~~or~~ investment property, or negotiable documents may be perfected by filing.

(b) Except as otherwise provided in § 57A-9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under § 57A-9-314;

(2) And except as otherwise provided in § 57A-9-308(d), a security interest in a letter-of-credit right may be perfected only by control under § 57A-9-314; ~~and~~

(3) A security interest in tangible money may be perfected only by the secured party's taking possession under § 57A-9-313~~.~~; and

(4) A security interest in electronic money may be perfected only by control under § 57A-9-314.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under ~~an authenticated~~a signed security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this chapter.

Section 62. That § 57A-9-313 be AMENDED:

57A-9-313. (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in ~~tangible negotiable documents,~~ goods, instruments, negotiable tangible documents, or tangible money~~, or tangible chattel paper~~ by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under § 57A-8-301.

(b) With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in § 57A-9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession ~~authenticates~~signs a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having ~~authenticated~~signed a record acknowledging that it will hold possession of the collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under § 57A-8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or § 57A-8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

Section 63. That § 57A-9-314 be AMENDED:

57A-9-314. (a) A security interest in ~~investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents~~controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, investment property, or letter-of-credit rights may be perfected by control of the collateral under § 57A-7-106, 57A-9-104, ~~57A-9-105~~section 45 of this Act, 57A-9-106, 57A-9-107, or ~~57A-7-106~~ section 46 of this Act.

(b) A security interest in ~~deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents~~controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, electronic documents, electronic money, or letter-of-credit rights is perfected by control under § 57A-7-106, 57A-9-104, ~~57A-9-105~~ section 45 of this Act, 57A-9-107, or ~~57A-7-206~~section 46 of this Act ~~when~~not earlier than the time the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under § 57A-9-106 ~~from~~not earlier than the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

Section 64. That chapter 57A-9 be amended with a NEW SECTION:

(a) A secured party may perfect a security interest in chattel paper by taking possession of each authoritative tangible copy of the record evidencing the chattel paper and obtaining control of each authoritative electronic copy of the electronic record evidencing chattel paper.

(b) A security interest is perfected under subsection (a) not earlier than the time the secured party takes possession and obtains control and remains perfected under subsection (a) only while the secured party retains possession and control.

(c) Section 57A-9-313(c) and (f) through (i) applies to perfection by possession of an authoritative tangible copy of a record evidencing chattel paper.

Section 65. That § 57A-9-316 be AMENDED:

57A-9-316. (a) A security interest perfected pursuant to the law of the jurisdiction designated in § 57A-9-301(1), ~~or~~ 57A-9-305(c), section 57 of this Act, or section 58 of this Act remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under § 57A-9-311(b) or 57A-9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) A security interest in chattel paper, controllable accounts, controllable electronic records, controllable payment intangibles, deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the chattel paper's jurisdiction, the controllable electronic record's jurisdiction, the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction

before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location;

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral in which the new debtor has or acquires rights before or within four months after the new debtor becomes bound under § 57A-9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral if the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the expiration of the four-month period or the time the financing statement would have become ineffective under the law of the jurisdiction designated in § 57A-9-301(1) or 57A-9-305(c) remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

Section 66. That § 57A-9-317 be AMENDED:

57A-9-317. (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under § 57A-9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time:

(A) The security interest or agricultural lien is perfected; or

(B) One of the conditions specified in § 57A-9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, ~~of tangible chattel paper, tangible documents,~~of goods, instruments, tangible documents, or a certified security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) ~~A~~Subject to subsections (f) through (i), a licensee of a general intangible or a buyer, other than a secured party, of collateral other than ~~tangible chattel paper,~~electronic money, ~~tangible documents,~~ goods, instruments, tangible documents, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in § 57A-9-320 and 57A-9-321, if a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

(f) A buyer, other than a secured party, of chattel paper takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and:

(1) Receives delivery of each authoritative tangible copy of the record evidencing the chattel paper; and

(2) If each authoritative electronic copy of the record evidencing the chattel paper can be subjected to control under § 57A-9-105, obtains control of each authoritative electronic copy.

(g) A buyer of an electronic document takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and, if each authoritative electronic copy of the document can be subjected to control under § 57A-7-106, obtains control of each authoritative electronic copy.

(h) A buyer of a controllable electronic record takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of each controllable electronic record.

(i) A buyer, other than a secured party, of a controllable account or a controllable payment intangible takes free of a security interest if, without knowledge of the security interest and before it is perfected, the buyer gives value and obtains control of the controllable account or controllable payment intangible.

Section 67. That § 57A-9-323 be AMENDED:

57A-9-323. (a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under § 57A-9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under § 57A-9-309 when it attaches; or

(B) Temporarily under § 57A-9-312(e), (f), or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under § 57A-9-309 or 57A-9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e), a buyer of goods ~~other than a buyer in ordinary course of business~~ takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods~~, other than a lessee in ordinary course of business,~~ takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

Section 68. That § 57A-9-324 be AMENDED:

57A-9-324. (a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in § 57A-9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in § 57A-9-330, and, except as otherwise provided in § 57A-9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends ~~an authenticated~~a signed notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsections (b)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under § 57A-9-312(f), before the beginning of the twenty-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in § 57A-9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends ~~an authenticated~~a signed notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsections (d)(2) through (4) apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under § 57A-9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in § 57A-9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, § 57A-9-322(a) applies to the qualifying security interests.

Section 69. That chapter 57A-9 be amended with a NEW SECTION:

A security interest in a controllable account, controllable electronic record, or controllable payment intangible held by a secured party having control of the account, electronic record, or payment intangible has priority over a conflicting security interest held by a secured party that does not have control.

Section 70. That § 57A-9-330 be AMENDED:

57A-9-330. (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value ~~and,~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper ~~or,~~ and obtains control ~~of~~under § 57A-9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under § 57A-9-105~~; and

(2) The ~~chattel paper does~~authoritative copies of the record evidencing the chattel paper do not indicate that ~~it~~the chattel paper has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value ~~and,~~ takes possession of each authoritative tangible copy of the record evidencing the chattel paper ~~or,~~ and obtains control ~~of~~under § 57A-9-105 of each authoritative electronic copy of the record evidencing the chattel paper ~~under § 57A-9-105~~ in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in § 57A-9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:

(1) Section 57A-9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in § 57A-9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if the authoritative copies of the record evidencing chattel paper or an instrument ~~indicates~~indicate that ~~it~~the

chattel paper or instrument has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

Section 71. That § 57A-9-331 be AMENDED:

57A-9-331. (a) This chapter does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, ~~or~~ a protected purchaser of a security, or a qualifying purchaser of a controllable account, controllable electronic record, or controllable payment intangible. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in chapters 57A-3, 57A-7, ~~and~~ 57A-8, and sections 92 to 98 of this Act, inclusive.

(b) This chapter does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under chapter 57A-8 or sections 92 to 98 of this Act, inclusive.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

Section 72. That § 57A-9-332 be AMENDED:

57A-9-332. (a) A transferee of tangible money takes the money free of a security interest ~~unless the transferee acts~~if the transferee receives possession of the money without acting in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account ~~unless the transferee acts~~if the transferee receives the funds without acting in collusion with the debtor in violating the rights of the secured party.

(c) A transferee of electronic money takes the money free of a security interest if the transferee obtains control of the money without acting in collusion with the debtor in violating the rights of the secured party.

Section 73. That § 57A-9-334 be AMENDED:

57A-9-334. (a) A security interest under this chapter may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) This chapter does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real property; or

(C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in § 57A-9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in ~~an authenticated~~a signed record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under paragraph (f)(2) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails over any inconsistent statute.

Section 74. That § 57A-9-341 be AMENDED:

57A-9-341. Except as otherwise provided in § 57A-9-340(c), and unless the bank otherwise agrees in ~~an authenticated~~a signed record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

Section 75. That § 57A-9-404 be AMENDED:

57A-9-404. (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment ~~authenticated~~signed by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this chapter requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

Section 76. That § 57A-9-406 be AMENDED:

57A-9-406. (a) Subject to subsections (b) through (i) and (l), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, ~~authenticated~~signed by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to ~~subsection~~subsections (h) and (l), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to ~~subsection~~subsections (h) and (l), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) In this subsection, "promissory note" includes a negotiable instrument that evidences chattel paper. Except as otherwise provided in ~~subsection~~subsections (e) and (k) and §§ 57A-2A-303 and 57A-9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper, payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral under § 57A-9-620.

(f) Except as otherwise provided in subsection (k) and §§ 57A-2A-303 and 57A-9-407 and subject to subsections (h) and (i), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to ~~subsection~~subsections (h) and (l), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

(j) This section prevails over any inconsistent statute.

(k) Subsections (d), (f), and (j) do not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(l) Subsections (a), (b), (c), and (g) do not apply to a controllable account or controllable payment intangible.

Section 77. That § 57A-9-408 be AMENDED:

57A-9-408. (a) Except as otherwise provided in ~~subsection~~subsections (b) and (f), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note, other than a sale pursuant to a disposition under § 57A-9-610 or an acceptance of collateral under § 57A-9-620.

(c) ~~A~~Except as otherwise provided in subsection (f), a rule of law, statute, or regulation that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note, health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsection (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign, possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

(e) This section prevails over any inconsistent statute.

(f) This section does not apply to a security interest in an ownership interest in a general partnership, limited partnership, or limited liability company.

(g) In this section, "promissory note" includes a negotiable instrument that evidences chattel paper.

Section 78. That § 57A-9-509 be AMENDED:

57A-9-509. (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in ~~an authenticated~~a signed record or pursuant to subsection (b) or (c); or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By ~~authenticating~~signing or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under § 57A-9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under § 57A-9-315(a)(1), a debtor authorizes the filing of an initial

financing statement, and an amendment, covering the collateral and property that becomes collateral under § 57A-9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by § 57A-9-513(a) or (c), the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d).

Section 79. That § 57A-9-513 be AMENDED:

57A-9-513. (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives ~~an authenticated~~a signed demand from a debtor.

(c) In cases not governed by subsection (a), within twenty days after a secured party receives ~~an authenticated~~a signed demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in § 57A-9-510, upon the filing of a termination statement with the filing office, the financing statement to which the

termination statement relates ceases to be effective. Except as otherwise provided in § 57A-9-510, for purposes of §§ 57A-9-519(g), 57A-9-522(a), and 57A-9-523(c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing statement to lapse.

Section 80. That § 57A-9-601 be AMENDED:

57A-9-601. (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in § 57A-9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under § 57A-7-106, 57A-9-104, 57A-9-105, section 45 of this Act, 57A-9-106, 57A-9-107, or ~~57A-7-106~~section 46 of this Act has the rights and duties provided in § 57A-9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and § 57A-9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.

(g) Except as otherwise provided in § 57A-9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Section 81. That § 57A-9-605 be AMENDED:

57A-9-605. ~~A~~(a) Except as provided in subsection (b), a secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(b) A secured party owes a duty based on its status as a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) The person is a debtor or obligor; and

(2) The secured party knows that the information in subsection (a)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

Section 82. That § 57A-9-608 be AMENDED:

57A-9-608. (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under § 57A-9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives ~~an authenticated~~a signed demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under § 57A-9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Section 83. That § 57A-9-611 be AMENDED:

57A-9-611. (a) In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor ~~an authenticated~~a signed notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under § 57A-9-610 shall send to the persons specified in subsection (c) a reasonable ~~authenticated~~signed notification of disposition.

(c) To comply with subsection (b), the secured party shall send ~~an authenticated~~a signed notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, ~~an authenticated~~a signed notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 57A-9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent ~~an authenticated~~a signed notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Section 84. That § 57A-9-613 be AMENDED:

57A-9-613. (a) Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in § ~~57A-9-614(3)~~57A-9-614(a)(3), when completed in accordance with the instructions in subsection (b) and § 57A-9-614(b), each provides sufficient information:

~~NOTIFICATION OF DISPOSITION OF COLLATERAL~~

~~To: [*Name of debtor, obligor, or other person to which the notification is sent*]~~

~~From: [*Name, address, and telephone number of secured party*]~~

~~Name of Debtor(s): [*Include only if debtor(s) are not an addressee*]~~

~~[*For a public disposition:*]~~

~~We will sell [or lease or license, *as applicable*] the [*describe collateral*] [to the highest qualified bidder] in public as follows:~~

~~Day and Date: %#40 _____~~

~~Time: %#40 _____~~

~~Place: %#40 _____~~

~~[*For a private disposition:*]~~

~~We will sell [or lease or license, *as applicable*] the [*describe collateral*] privately sometime after [*day and date*].~~

~~You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] [for a charge of $___]. You may request an accounting by calling us at [*telephone number*].~~

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: (Name of debtor, obligor, or other person to which the notification is sent)

From: (Name, address, and telephone number of secured party)

{1} Name of any debtor that is not an addressee: (Name of each debtor)

{2} We will sell (describe collateral) (to the highest qualified bidder) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

{3} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{4} You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell or, as applicable, lease or license.

{5} If you request an accounting, you must pay a charge of $ (amount).

{6} You may request an accounting by calling us at (telephone number).

[END OF FORM]

(b) The following instructions apply to the form of notification in subsection (a)(5):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(5). Do not include numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions;

(2) Include and complete {1} only if there is a debtor that is not an addressee of the notification and list the name or names;

(3) Include and complete either item {2}, if the notification relates to a public disposition of the collateral, or item {3}, if the notification relates to a private disposition of the collateral. If item {2} is included, include the words "to the highest qualified bidder" only if applicable;

(4) Include and complete items {4} and {6}; and

(5) Include and complete item {5} only if the sender will charge the recipient for an accounting.

Section 85. That § 57A-9-614 be AMENDED:

57A-9-614. (a) In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in § ~~57A-9-613(1)~~57A-9-613(a)(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under § 57A-9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed in accordance with the instructions in subsection (b), provides sufficient information:

~~[*Name and address of secured party*]~~

~~[*Date*]~~

~~NOTICE OF OUR PLAN TO SELL PROPERTY~~

~~[*Name and address of any obligor who is also a debtor*]~~

~~Subject: [*Identification of Transaction*]~~

~~We have your [*describe collateral*], because you broke promises in our agreement.~~

~~[*For a public disposition:*]~~

~~We will sell [*describe collateral*] at public sale. A sale could include a lease or license. The sale will be held as follows:~~

~~Date: %#40 _____~~

~~Time: %#40 _____~~

~~Place: %#40 _____~~

~~You may attend the sale and bring bidders if you want.~~

~~[*For a private disposition:*]~~

~~We will sell [*describe collateral*] at private sale sometime after [*date*]. A sale could include a lease or license.~~

~~The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [*will or will not, as applicable*] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.~~

~~You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [*telephone number*].~~

~~If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [*telephone number*] [or write us at [*secured party's address*]] and request a written explanation. [We will charge you $___ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]~~

~~If you need more information about the sale call us at [*telephone number*]] [or write us at [*secured party's address*]].~~

~~We are sending this notice to the following other people who have an interest in [*describe collateral*] or who owe money under your agreement:~~

~~[*Names of all other debtors and obligors, if any*]~~

(Name and address of secured party)

(Date)

NOTICE OF OUR PLAN TO SELL PROPERTY

(Name and address of any obligor who is also a debtor)

Subject: (Identify transaction)

We have your (describe collateral), because you broke promises in our agreement.

{1} We will sell (describe collateral) at public sale. A sale could include a lease or license. The sale will be held as follows:

(Date)

(Time)

(Place)

You may attend the sale and bring bidders if you want.

{2} We will sell (describe collateral) at private sale sometime after (date). A sale could include a lease or license.

{3} The money that we get from the sale, after paying our costs, will reduce the amount you owe. If we get less money than you owe, you (will or will not, as applicable) still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

{4} You can get the property back at any time before we sell it by paying us the full amount you owe, not just the past due payments, including our expenses. To learn the exact amount you must pay, call us at (telephone number).

{5} If you want us to explain to you in (writing) (writing or in (description of electronic record)) (description of electronic record) how we have figured the amount that you owe us, {6} call us at (telephone number) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)) {7} and request (a written explanation) (a written explanation or an explanation in (description of electronic record)) (an explanation in description of electronic record).

{8} We will charge you $ (amount) for the explanation if we sent you another written explanation of the amount you owe use within the last six months.

{9} If you need more information about the sale, (call us at (telephone number)) (or) (write us at (secured party's address)) (or contact us by (description of electronic communication method)).

{10} We are sending this notice to the following other people who have interest in (describe collateral) or who owe money under your agreement:

(Names of all other debtors and obligors, if any)

[END OF FORM]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this chapter.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

(b) The following instructions apply to the form of notification in subsection (a)(3):

(1) The instructions in this subsection refer to the numbers in braces before items in the form of notification in subsection (a)(3). Do not include the numbers or braces in the notification. The numbers and braces are used only for the purpose of these instructions;

(2) Include and complete either item {1}, if the notification relates to a public disposition of the collateral, or item {2}, if the notification relates to a private disposition of the collateral;

(3) Include and complete items {3}, {4}, {5}, {6}, and {7};

(4) In item {5}, include and complete any one of the three alternative methods for the explanation, writing, writing or electronic record, or electronic record;

(5) In item {6}, include the telephone number. In addition, the sender may include and complete either or both of the two additional alternative methods of communication, writing or electronic communication, for the recipient of the notification to communicate with the sender. Neither of the two additional methods of communication is required to be included;

(6) In item {7}, include and complete the method or methods for the explanation, writing, writing or electronic record, or electronic record, included in item {5};

(7) Include and complete item {8} only if a written explanation is included in item {5} as a method for communicating the explanation and the sender will charge the recipient for another written explanation;

(8) In item {9}, include either the telephone number or the address or both the telephone number and the address. In addition, the sender may include and complete the additional method of communication, electronic communication, for the recipient of the notification to communicate with the sender. That additional method of electronic communication is not required to be included; and

(9) If item {10} does not apply, insert "None" after "agreement:".

Section 86. That § 57A-9-615 be AMENDED:

57A-9-615. (a) A secured party shall apply or pay over for application the cash proceeds of disposition under § 57A-9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien ~~an authenticated~~a signed demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor ~~an authenticated~~a signed demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under § 57A-9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Section 87. That § 57A-9-616 be AMENDED:

57A-9-616. (a) In this section:

(1) "Explanation" means a ~~writing~~record that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) ~~Authenticated~~Signed by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under § 57A-9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under § 57A-9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes ~~written~~ demand in a record on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), ~~a writing~~an explanation must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and

(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

Section 88. That § 57A-9-619 be AMENDED:

57A-9-619. (a) In this section, "transfer statement" means a record ~~authenticated~~signed by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

Section 89. That § 57A-9-620 be AMENDED:

57A-9-620. (a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);

(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal ~~authenticated~~signed by:

(A) A person to which the secured party was required to send a proposal under § 57A-9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to § 57A-9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in ~~an authenticated~~a signed record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) are met.

(c) For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~signed after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record ~~authenticated~~signed after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection ~~authenticated~~signed by the debtor within twenty days after the proposal is sent.

(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to § 57A-9-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to § 57A-9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).

(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to § 57A-9-610 within the time specified in subsection (f) if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods .

(f) To comply with subsection (e), the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and ~~authenticated~~signed after default.

(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Section 90. That § 57A-9-621 be AMENDED:

57A-9-621. (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, ~~an authenticated~~a signed notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in § 57A-9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

Section 91. That § 57A-9-624 be AMENDED:

57A-9-624. (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under § 57A-9-611 only by an agreement to that effect entered into and ~~authenticated~~signed after default.

(b) A debtor may waive the right to require disposition of collateral under § 57A-9-620(e) only by an agreement to that effect entered into and ~~authenticated~~signed after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under § 57A-9-623 only by an agreement to that effect entered into and ~~authenticated~~signed after default.

Section 92. That § 57A-9-628 be AMENDED:

57A-9-628. (a) ~~Unless~~Subject to subsection (f), unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and

(2) The secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.

(b) ~~A~~Subject to subsection (f), a secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under § 57A-9-625(c)(2) for its failure to comply with § 57A-9-616.

(e) A secured party is not liable under § 57A-9-625(c)(2) more than once with respect to any one secured obligation.

(f) Subsections (a) and (b) do not apply to limit the liability of a secured party to a person if, at the time the secured party obtains control of collateral that is a controllable account, controllable electronic record, or controllable payment intangible or at the time the security interest attaches to the collateral, whichever is later:

(1) The person is a debtor or obligor; and

(2) The secured party knows that the information in subsection (b)(1)(A), (B), or (C) relating to the person is not provided by the collateral, a record attached to or logically associated with the collateral, or the system in which the collateral is recorded.

Section 93. That a NEW SECTION be added to title 57A:

This article may be cited as Uniform Commercial Code--Controllable Electronic Records.

Section 94. That a NEW SECTION be added to title 57A:

(a) In this chapter:

(1) "Controllable electronic record" means a record stored in an electronic medium that can be subjected to control under section 96 of this Act. The term does not include a controllable account, a controllable payment intangible, a deposit account, an electronic copy of a record evidencing chattel paper, an electronic document of title, electronic money, investment property, or a transferable record.

(2) "Qualifying purchaser" means a purchaser of a controllable electronic record or an interest in a controllable electronic record that obtains control of the controllable electronic record for value, in good faith, and without notice of a claim of a property right in the controllable electronic record.

(3) "Transferable record" has the meaning provided for that term in:

(A) Section 201(a)(1) of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7021(a)(1), as amended and in effect January 1, 2024; or

(B) As defined in § 53-12-40.

(4) "Value" has the meaning provided in § 57A-3-303(a), as if references in that subsection to an "instrument" were references to a controllable account, controllable electronic record, or controllable payment intangible.

(b) The definitions in chapter 57A-9 of "account debtor," "controllable account," "controllable payment intangible," "chattel paper," "deposit account," "electronic money," and "investment property" apply to this chapter.

(c) Chapter 57A-1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 95. That a NEW SECTION be added to title 57A:

(a) If there is a conflict between this chapter and chapter 57A-9, chapter 57A-9 governs.

(b) A transaction subject to this chapter is subject to any applicable rule of law that establishes a different rule for consumers and to (i) title 51A and title 54 and (ii) chapter 37-23.

Section 96. That a NEW SECTION be added to title 57A:

(a) This section applies to the acquisition and purchase of rights in a controllable account or controllable payment intangible, including the rights and benefits under subsections (c), (d), (e), (g), and (h) of a purchaser and qualifying purchaser, in the same manner this section applies to a controllable electronic record.

(b) To determine whether a purchaser of a controllable account or a controllable payment intangible is a qualifying purchaser, the purchaser obtains control of the account or payment intangible if it obtains control of the controllable electronic record that evidences the account or payment intangible.

(c) Except as provided in this section, law other than this chapter determines whether a person acquires a right in a controllable electronic record and the right the person acquires.

(d) A purchaser of a controllable electronic record acquires all rights in the controllable electronic record that the transferor had or had power to transfer, except that a purchaser of a limited interest in a controllable electronic record acquires rights only to the extent of the interest purchased.

(e) A qualifying purchaser acquires its rights in the controllable electronic record free of a claim of a property right in the controllable electronic record.

(f) Except as provided in subsections (a) and (e) for a controllable account and a controllable payment intangible or law other than this chapter, a qualifying purchaser takes a right to payment, right to performance, or other interest in property evidenced by the controllable electronic record subject to a claim of a property right in the right to payment, right to performance, or other interest in property.

(g) An action may not be asserted against a qualifying purchaser based on both a purchase by the qualifying purchaser of a controllable electronic record and a claim of a property right in another controllable electronic record, whether the action is framed in conversion, replevin, constructive trust, equitable lien, or other theory.

(h) Filing of a financing statement under chapter 57A-9 is not notice of a claim of a property right in a controllable electronic record.

Section 97. That a NEW SECTION be added to title 57A:

(a) A person has control of a controllable electronic record if the electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded:

(1) Gives the person:

(A) Power to avail itself of substantially all the benefit from the electronic record; and

(B) Exclusive power, subject to subsection (b), to:

(i) Prevent others from availing themselves of substantially all the benefit from the electronic record; and

(ii) Transfer control of the electronic record to another person or cause another person to obtain control of another controllable electronic record as a result of the transfer of the electronic record; and

(2) Enables the person readily to identify itself in any way, including by name, identifying number, cryptographic key, office, or account number, as having the powers specified in paragraph (1).

(b) Subject to subsection (c), a power is exclusive under subsection (a)(1)(B)(i) and (ii) even if:

(1) The controllable electronic record, a record attached to or logically associated with the electronic record, or a system in which the electronic record is recorded limits the use of the electronic record or has a protocol programmed to cause a change, including a transfer or loss of control or a modification of benefits afforded by the electronic record; or

(2) The power is shared with another person.

(c) A power of a person is not shared with another person under subsection (b)(2) and the person's power is not exclusive if:

(1) The person can exercise the power only if the power also is exercised by the other person; and

(2) The other person:

(A) Can exercise the power without exercise of the power by the person; or

(B) Is the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record.

(d) If a person has the powers specified in subsection (a)(1)(B)(i) and (ii), the powers are presumed to be exclusive.

(e) A person has control of a controllable electronic record if another person, other than the transferor to the person of an interest in the controllable electronic record or a controllable account or controllable payment intangible evidenced by the controllable electronic record:

(1) Has control of the electronic record and acknowledges that it has control on behalf of the person; or

(2) Obtains control of the electronic record after having acknowledged that it will obtain control of the electronic record on behalf of the person.

(f) A person that has control under this section is not required to acknowledge that it has control on behalf of another person.

(g) If a person acknowledges that it has or will obtain control of behalf of another person, unless the person otherwise agrees or law other than this chapter or chapter 57A-9 otherwise provides, the person does not owe any duty to the other person and is not required to confirm the acknowledgement to any other person.

Section 98. That a NEW SECTION be added to title 57A:

(a) An account debtor on a controllable account or controllable payment intangible may discharge its obligation by paying:

(1) The person having control of the controllable electronic record that evidences the controllable account or controllable payment intangible; or

(2) Except as provided in subsection (b), a person that formerly had control of the controllable electronic record.

(b) Subject to subsection (d), the account debtor may not discharge its obligation by paying a person that formerly had control of the controllable electronic record if the account debtor receives a notification that:

(1) Is signed by a person that formerly had control or the person to which control was transferred;

(2) Reasonably identifies the controllable account or controllable payment intangible;

(3) Notifies the account debtor that control of the controllable electronic record that evidences the controllable account or controllable payment intangible was transferred;

(4) Identifies the transferee, in any reasonable way, including by name, identifying number, cryptographic key, office, or account number; and

(5) Provides a commercially reasonable method by which the account debtor is to pay the transferee.

(c) After receipt of a notification that complies with subsection (b), the account debtor may discharge its obligation by paying in accordance with the notification and may not discharge the obligation by paying a person that formerly had control.

(d) Subject to subsection (h), notification is ineffective under subsection (b):

(1) Unless, before the notification is sent, the account debtor and the person that, at that time, had control of the controllable electronic record that evidences the controllable account or controllable payment intangible, agree in a signed record to a commercially reasonable method by which a person may furnish reasonable proof that control has been transferred;

(2) To the extent an agreement between the account debtor and seller of a payment intangible limits the account debtor's duty to pay a person other than the seller, and the limitation is effective under law other than this chapter; or

(3) At the option of the account debtor, if the notification notifies the account debtor to:

(A) Divide a payment;

(B) Make less than the full amount of an installment or other periodic payment; or

(C) Pay any part of a payment by more than one method or to more than one person.

(e) Subject to subsection (h), if requested by the account debtor, the person giving the notification under subsection (b) seasonably shall furnish reasonable proof, using the method in the agreement referred to in subsection (d)(1), that control of the controllable electronic record has been transferred. Unless the person complies with the request, the account debtor may discharge its obligation by paying a person that formerly had control, even if the account debtor has received a notification under subsection (b).

(f) A person furnishes reasonable proof under subsection (e) that control has been transferred if the person demonstrates, using the method in the agreement referred to in subsection (d)(1), that the transferee has the power to:

(1) Avail itself of substantially all the benefit from the controllable electronic record;

(2) Prevent others from availing themselves of substantially all the benefit from the controllable electronic record; and

(3) Transfer the powers specified in paragraphs (1) and (2) to another person.

(g) Subject to subsection (h), an account debtor may not waive or vary its rights under subsection (d)(1) and (e) or its option under subsection (d)(3).

(h) This section is subject to law other than this chapter that establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

Section 99. That a NEW SECTION be added to title 57A:

(a) Except as provided in subsection (b), the local law of a controllable electronic record's jurisdiction governs a matter covered by this chapter.

(b) For a controllable electronic record that evidences a controllable account or controllable payment intangible, the local law of the controllable

electronic record's jurisdiction governs a matter covered by section 97 of this Act unless an effective agreement determines that the local law of another jurisdiction governs.

(c) The following rules determine a controllable electronic record's jurisdiction under this section:

(1) If the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title 57A, that jurisdiction is the controllable electronic record's jurisdiction.

(2) If paragraph (1) does not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that a particular jurisdiction is the controllable electronic record's jurisdiction for purposes of this chapter or title 57A, that jurisdiction is the controllable electronic record's jurisdiction.

(3) If paragraphs (1) and (2) do not apply and the controllable electronic record, or a record attached to or logically associated with the controllable electronic record and readily available for review, expressly provides that the controllable electronic record is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(4) If paragraphs (1), (2), and (3) do not apply and the rules of the system in which the controllable electronic record is recorded are readily available for review and expressly provide that the controllable electronic record or the system is governed by the law of a particular jurisdiction, that jurisdiction is the controllable electronic record's jurisdiction.

(5) If paragraphs (1) through (4) do not apply, the controllable electronic record's jurisdiction is the District of Columbia.

(d) If subsection (c)(5) applies and Article 12 is not in effect in the District of Columbia without material modification, the governing law for a matter covered by this chapter is the law of the District of Columbia as though Article 12 were in effect in the District of Columbia without material modification. In this subsection, "Article 12" means Article 12 of Uniform Commercial Code Amendments (2022).

(e) To the extent subsections (a) and (b) provide that the local law of the controllable electronic record's jurisdiction governs a matter covered by this chapter, that law governs even if the matter or a transaction to which the matter relates does not bear any relation to the controllable electronic record's jurisdiction.

(f) The rights acquired under section 95 of this Act by a purchaser or qualifying purchaser are governed by the law applicable under this section at the time of purchase.

Section 100.

Sections 92 through 98 of this Act, inclusive, will become chapter 57A-12 and will be titled Controllable Electronic Records. Sections 100 to 109 of this Act, inclusive, will become chapter 57A-13 and will be titled Transitional Provisions for Uniform Commercial Code Amendments (2022).

Section 101. That a NEW SECTION be added to title 57A:

This chapter may be cited as Transitional Provisions for Uniform Commercial Code Amendments (2022).

Section 102. That a NEW SECTION be added to title 57A:

(a) In this chapter:

(1) "Adjustment date" means July 1, 2025, or the date that is one year after July 1, 2024, whichever is later.

(2) "Article 12" means Article 12 of the Uniform Commercial Code as adopted under sections 92 to 98 of this Act, inclusive.

(3) "Article 12 property" means a controllable account, controllable electronic record, or controllable payment intangible.

(b) The following definitions in other articles of title 57A apply to this chapter.

"Controllable account." § 57A-9-102.

"Controllable electronic record." Section 93 of this Act.

"Controllable payment intangible." § 57A-9-102.

"Electronic money." § 57A-9-102.

"Financing statement." § 57A-9-102.

(c) Chapter 57A-1 contains general definitions and principles of construction and interpretation applicable throughout this chapter.

Section 103. That a NEW SECTION be added to title 57A:

Except as provided in sections 103 to 108 of this Act, inclusive, a transaction validly entered into before July 1, 2024, and the rights, duties, and interests flowing from the transaction remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by law other than title 57A or, if applicable, title 57A, as though this chapter had not taken effect.

Section 104. That a NEW SECTION be added to title 57A:

(a) Except as provided in this section, chapter 57A-9 as amended by this Act and sections 92 to 98 of this Act, inclusive, apply to a transaction, lien, or other interest in property, even if the transaction, lien, or interest was entered into, created, or acquired before July 1, 2024.

(b) Except as provided in subsection (c) and sections 104 to 108 of this Act, inclusive:

(1) A transaction, lien, or interest in property that was validly entered into, created, or transferred before July 1, 2024, and was not governed by title 57A, but would be subject to chapter 57A-9 as amended by this Act or sections 92 to 98 of this Act, inclusive, if it had been entered into, created, or transferred on or after July 1 2024, including the rights, duties, and interests flowing from the transaction, lien, or interest, remains valid on and after July 1, 2024;

(2) The transaction, lien, or interest may be terminated, completed, consummated, and enforced as required or permitted by this Act or by the law that would apply if this Act had not taken effect.

(c) This Act does not affect an action, case, or proceeding commenced before July 1, 2024.

Section 105. That a NEW SECTION be added to title 57A:

(a) A security interest that is enforceable and perfected immediately before July 1, 2024, is a perfected security interest under this Act if, on July 1, 2024, the requirements for enforceability and perfection under this Act are satisfied without further action.

(b) If a security interest is enforceable and perfected immediately before July 1, 2024, but the requirements for enforceability or perfection under this Act are not satisfied on July 1, 2024, the security interest:

(1) Is a perfected security interest until the earlier of the time perfection would have ceased under the law in effect immediately before July 1, 2024, or the adjustment date;

(2) Remains enforceable thereafter only if the security interest satisfies the requirements for enforceability under § 57A-9-203, as amended by this Act, before the adjustment date; and

(3) Remains perfected thereafter only if the requirements for perfection under this Act are satisfied before the time specified in paragraph (1).

Section 106. That a NEW SECTION be added to title 57A:

A security interest that is enforceable immediately before July 1, 2024, but is unperfected at that time:

(1) Remains an enforceable security interest until the adjustment date;

(2) Remains enforceable thereafter if the security interest become enforceable under § 57A-9-203, as amended by this Act, on July 1, 2024, or before the adjustment date; and

(3) Becomes perfected:

(A) Without further action, on July 1, 2024, if the requirements for perfection under this Act are satisfied before or at that time; or

(B) When the requirements for perfection are satisfied if the requirements are satisfied after that time.

Section 107. That a NEW SECTION be added to title 57A:

(a) If action, other than the filing of a financing statement, is taken before July 1, 2024, and the action would have resulted in perfection of the security interest had the security interest become enforceable before July 1, 2024, the action is effective to perfect a security interest that attaches under this Act before the adjustment date. An attached security interest becomes unperfected on the adjustment date unless the security interest becomes a perfected security interest under this Act before the adjustment date.

(b) The filing of a financing statement before July 1, 2024, is effective to perfect a security interest on July 1, 2024, to the extent the filing would satisfy the requirements for perfection under this Act.

(c) The taking of an action before July 1, 2024, is sufficient for the enforceability of a security interest on July 1, 2024, if the action would satisfy the requirements for enforceability under this Act.

Section 108. That a NEW SECTION be added to title 57A:

(a) Subject to subsections (b) and (c), this Act determines the priority of conflicting claims to collateral.

(b) Subject to subsection (c), if the priorities of claims to collateral were established before July 1, 2024, chapter 57A-9 as in effect before July 1, 2024, determines priority.

(c) On the adjustment date, to the extent the priorities determined by chapter 57A-9 as amended by this Act modify the priorities established before July 1, 2024, the priorities of claims to Article 12 property and electronic money established before July 1, 2024, cease to apply.

Section 109. That a NEW SECTION be added to title 57A:

(a) Subject to subsection (b) and (c), sections 92 to 98, inclusive, of this Act, determines the priority of conflicting claims to Article 12 property when the priority rules of chapter 57A-9 as amended by this Act do not apply.

(b) Subject to subsection (c), when the priority rules of chapter 57A-9 as amended by this Act do not apply, to the extent the priorities determined by this Act modify the priorities established before July 1, 2024, the priorities of claims to Article 12 property were established before July 1, 2024, law other than sections 92 to 98, inclusive, of this Act, determines priority.

(c) When the priority rules of chapter 57A-9 as amended by this Act do not apply, to the extent the priorities determined by this Act modify the priorities established before July 1, 2024, the priorities of claims to Article 12 property established before July 1, 2024, cease to apply on the adjustment date.

Signed February 27, 2024

Chapter 199

(Senate Bill 38)

An Act to amend the amount a merchant or place of business may assess against returned checks.

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

Section 1. That § 57A-3-421 be AMENDED:

57A-3-421. If a merchant or place of business conspicuously posts a notice on its premises or if a merchant or place of business regularly extends credit and prints a notice on its customer statements of such size and location as to be conspicuous, stating that a fee will be assessed against returned checks, any person who issues a check or other draft to the merchant or place of business ~~which~~ that is not honored for any of the following reasons upon presentment is liable for all reasonable costs and expenses of collection:

(1) The drawer's account is closed;

(2) The drawer's account does not have sufficient funds; or

(3) The drawer does not have sufficient credit with the drawee.

The costs and expenses provided for in this section are reasonable if they do not exceed ~~forty~~ sixty dollars plus any applicable sales tax.

Signed February 5, 2024

INSURANCE

Chapter 200
(House Bill 1126)

An Act to permit an alternative delivery method for issuance of a policy by an insurer.

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

Section 1. That a NEW SECTION be added to chapter 58-1:

An insurer may comply with the policy delivery requirements of §§ 58-15-8.2, 58-15-59.2, 58-17-11.1, 58-17A-8.1, and 58-28-24.2 by one of the following alternative delivery methods:

(1) Via first-class mail using an intelligent mail barcode or another similar tracking method used or approved by the United States Postal Service; or

(2) Via commercial delivery service using a tracking method approved by the division.

An insurer utilizing an alternative delivery method must retain a record evidencing delivery of the policy for five years.

Signed February 28, 2024

Chapter 201
(House Bill 1059)

An Act to revise certain provisions regarding insurance holding companies.

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

Section 1. That § 58-5A-1 be AMENDED:

58-5A-1. Terms used in this chapter mean:

(1) "Affiliate of, or a person affiliated with, a specific person," any person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified;

(2) "Control," including "controlling," "controlled by," and "under common control with," the possession, direct or indirect, of the power to direct or

cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is solely the result of an official position with, or a corporate office held by, the person. Control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by § 58-5A-29 that control does not exist in fact;

(3) "Enterprise risk," any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance holding company system as a whole, including anything that may cause the insurer's risk-based capital to fall into company action level or may cause the insurer to be in hazardous financial condition pursuant to chapter 58-4;

(4) "Group-wide supervisor," the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the director under the provisions of §§ 58-5A-80.1 to 58-5A-80.8, inclusive, to have sufficient significant contacts with the internationally active insurance group;

(5) "Insurance group," for the purposes of conducting an ORSA, those insurers and affiliates included within an insurance holding company system;

(6) "Insurance holding company system," any two or more affiliated persons, one or more of which is an insurer;

(7) "Insurer," a company qualified and licensed by the director of the Division of Insurance to transact the business of insurance in this state. For ORSA purposes, the term, insurer, does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state;

(8) "Internationally active insurance group," an insurance holding company system that includes an insurer registered under chapter 58-5A and that:

(a) Writes premiums in at least three countries;

(b) Writes at least ten percent of its total gross premium outside the United States; and

(c) Based on a three-year rolling average, has total assets in the insurance holding company system of at least fifty billion dollars or the total gross written premiums of the insurance holding company system are at least ten billion dollars;

(9) "NAIC," the National Association of Insurance Commissioners;

(10) "NAIC liquidity stress test framework," the NAIC publication that includes a history of the NAIC's development of regulatory liquidity stress testing, the scope criteria applicable for a specific data year, the liquidity stress test instructions, and reporting templates for a specific data year as approved by the NAIC and adopted by the director pursuant to rules promulgated under chapter 1-26;

(11) "ORSA guidance manual," the version of the NAIC own risk and solvency assessment guidance manual as adopted by the director for use in South Dakota by administrative rule;

~~(11)~~(12) "ORSA summary report," a confidential high-level summary of an insurer or insurance group's ORSA;

~~(12)~~(13) "Own risk and solvency assessment" or "ORSA," a confidential internal assessment, appropriate to the nature, scale, and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks;

~~(13)~~(14) "Security holder" of a specified person is one who owns any security of the person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing;

(15) "Scope criteria," the designated exposure bases along with minimum magnitudes thereof for the specified data year, used to establish a preliminary list of insurers considered scoped into the NAIC liquidity stress test framework for that data year as detailed in the NAIC liquidity stress test framework;

~~(14)~~(16) "Subsidiary of a specified person," any affiliate controlled by a person directly, or indirectly, through one or more intermediaries;

~~(15)~~(17) "Voting security," any security convertible into or evidencing a right to acquire a voting security.

Section 2. That § 58-5A-23 be AMENDED:

58-5A-23. No information need be disclosed on the registration statement filed pursuant to the provisions of § 58-5A-20 if ~~such~~ the information is not material for the purposes of this chapter. Unless the director by rule~~, regulation,~~ or order provides otherwise, sales, purchases, exchanges, loans, or extensions of credit, or investments, involving one percent or less of an insurer's admitted assets as of December thirty-first immediately preceding ~~shall not be deemed~~ are not material for purposes of this section. The definition of materiality provided in this section does not apply for purposes of the group capital calculation or the liquidity stress test framework.

Section 3. That § 58-5A-41 be AMENDED:

58-5A-41. Documents, materials, or other information including filings in the possession or control of the Division of Insurance that are obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to this chapter and all information reported pursuant to this chapter are recognized as being proprietary and to contain trade secrets, and ~~shall be~~ are confidential by law and privileged, are not subject to open records, freedom of information, sunshine, or other related laws, are not subject to subpoena, and are not subject to discovery or admissible in evidence in any private civil action. However, the director is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as a part of the director's official duties. The director may not otherwise make the documents, materials, or other information public without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be

served by the publication thereof, in which event the director may publish all or any part ~~in such manner as may be deemed appropriate~~.

For purposes of the information reported and provided to the director pursuant to section 7 of this Act, the director shall maintain the confidentiality of the group capital calculation and group capital ratio produced within the calculation and any group capital information received from an insurance holding company supervised by the Federal Reserve Board or any U.S. group-wide supervisor.

For purposes of the information reported and provided to the director pursuant to section 10 of this Act, the director shall maintain the confidentiality of the liquidity stress test results and supporting disclosures and any liquidity stress test information received from an insurance holding company supervised by the Federal Reserve Board and non-U.S. group-wide supervisors.

Section 4. That § 58-5A-41.2 be AMENDED:

58-5A-41.2. To assist in the performance of the duties assigned to the director pursuant to the provisions of this chapter:

(1) The director may, upon request, share documents, materials, or other information, including the confidential and privileged documents, materials, or information, including proprietary materials, trade secrets, documents, and materials disclosed pursuant to this chapter with a state, federal, and international regulatory agency, the NAIC ~~and its affiliates and subsidiaries~~, any third-party consultant designated by the director, and a state, federal, and international law enforcement authority, including a member of any supervisory college described in §§ 58-5A-78 to 58-5A-80, inclusive, if the recipient agrees in writing to maintain the confidentiality and privileged status of the document, material, or other information, and verifies in writing the legal authority to maintain confidentiality;

(2) Notwithstanding the provisions of subdivision (1), the director may only share ~~confidential and privileged documents, or~~ information reported pursuant to § 58-5A-29.1, with a director of a state that has laws substantially similar to the provisions of § 58-5A-41, and who agrees in writing not to disclose such information; and

(3) ~~May~~ The director may receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, including proprietary materials and trade secret information from the NAIC ~~and its affiliates and subsidiaries~~ and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

The sharing of information by the director pursuant to this chapter ~~does~~ is not ~~constitute~~ a delegation of regulatory authority or rule-making authority, and the director is solely responsible for the administration, execution, and enforcement of the provisions of this chapter.

Section 5. That § 58-5A-41.3 be AMENDED:

58-5A-41.3. The director ~~shall~~ must enter into written agreements with the NAIC and any third-party consultant designated by the director governing the sharing and use of information provided pursuant to this chapter that:

(1) Specify procedures and protocols regarding the confidentiality and security of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the director pursuant to this chapter, including procedures and protocols for sharing by the NAIC with any other state, federal, or international regulator. The agreement must provide that the recipient agrees in writing to maintain the confidentiality and privileged status of the documents, materials, or other information and has verified in writing the legal authority to maintain the confidentiality;

(2) Specify that ownership of information shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant pursuant to this chapter remains with the director and that the NAIC or a third-party consultant, as designated by the director, use of the information is subject to the direction of the director;

(3) Prohibit the NAIC or a third-party consultant designated by the director from storing the information shared pursuant to this chapter in a permanent database after the underlying analysis is completed, except as for those materials reported pursuant to section 7 of this Act;

(4) Require prompt notice to be given to an insurer whose confidential information is in the possession of the NAIC or a third-party consultant designated by the director pursuant to this chapter and is subject to a request or subpoena issued to the NAIC for disclosure or production; ~~and~~

~~(4)~~(5) Require the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the director to consent to intervention by an insurer in any judicial or administrative action in which the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the director may be required to disclose confidential information about the insurer shared with the NAIC ~~and its affiliates and subsidiaries~~ or a third-party consultant designated by the director pursuant to this chapter; and

(6) If applicable, provide the identity of the consultant to applicable insurers for documents, materials, or information reporting pursuant to section 10 of this Act, in the case of an agreement involving a third-party consultant.

Section 6. That § 58-5A-41.4 be AMENDED:

58-5A-41.4. Any document, material, or other information in the possession or control of the NAIC or a third-party consultant as designated by the director, shared pursuant to this chapter, is confidential by law and privileged, is not subject to subpoena, open records laws, and is not subject to discovery or admissible as evidence in any private civil action.

Section 7. That chapter 58-5A be amended with a NEW SECTION:

Except as provided in this section and in section 8 of this Act, the ultimate controlling person of every insurer subject to registration must concurrently file with the registration an annual group capital calculation as directed by the lead state director or commissioner. The report must be completed in accordance with the NAIC group capital calculation instructions as posted on the website of the division. The instructions may permit the lead state director or commissioner to allow a controlling person that is not the ultimate controlling person to file the group capital calculation. The report must be filed with the lead state director or commissioner of the insurance holding company system as determined by the director in accordance with the procedures within the financial analysis handbook as adopted by the director pursuant to rules promulgated under chapter 1-26. The director may promulgate rules pursuant to chapter 1-26 to establish requirements,

standards, criteria, exemptions, instructions, and limitations for the group capital calculation and related filings.

Section 8. That chapter 58-5A be amended with a NEW SECTION:

Insurance holding company systems described in this section are exempt from filing the group capital calculation provided in section 7 of this Act:

(1) An insurance holding company system that:

(a) Has only one insurer within its holding company structure;

(b) Only writes business in its domestic state;

(c) Is only licensed in its domestic state; and

(d) Assumes no business from any other insurer;

(2) An insurance holding company system that is required to perform a group capital calculation specified by the United States Federal Reserve Board. The lead state director or commissioner must request the calculation from the Federal Reserve Board under the terms of information sharing agreements in effect. If the Federal Reserve Board cannot share the calculation with the lead state director or commissioner, the insurance holding company system is not exempt from the group capital calculation filing;

(3) An insurance holding company system whose non-U.S. group-wide supervisor is located within a reciprocal jurisdiction, as described in § 58-14-16.23, that recognizes the U.S. state regulatory approach to group supervision and group capital; or

(4) An insurance holding company system that provides information to the lead state that meets the requirements for accreditation under the NAIC financial standards and accreditation program, either directly or indirectly through the group-wide supervisor, who has determined the information is satisfactory to allow the lead state to comply with the NAIC group supervision approach, as detailed in the NAIC financial analysis handbook, and whose non-U.S. group-wide supervisor that is not in a reciprocal jurisdiction recognizes and accepts, as specified by the director in regulation, the group capital calculation as the world-wide group capital assessment for U.S. insurance groups who operate in that jurisdiction.

If the lead state director or commissioner determines that an insurance holding company system no longer meets one or more of the requirements for an exemption from filing the group capital calculation under this section, the insurance holding company system must file the group capital calculation at the next annual filing date unless given an extension by the lead state director or commissioner based on reasonable grounds shown.

The lead state director or commissioner has the discretion to exempt the ultimate controlling person from filing the annual group capital calculation or to accept a limited group capital filing or report in accordance with criteria as specified by the director in rules promulgated pursuant to chapter 1-26.

Section 9. That chapter 58-5A be amended with a NEW SECTION:

Notwithstanding the provisions of subdivisions (3) and (4) of section 8 of this Act, if this state is considered the lead state, the director must require the filing of the group capital calculation for U.S. operations for any non-U.S. based insurance holding company system where, after any necessary consultation with other supervisors or officials, it is deemed appropriate by the director for prudential

oversight and solvency monitoring purposes or for ensuring the competitiveness of the insurance marketplace.

Section 10. That chapter 58-5A be amended with a NEW SECTION:

The ultimate controlling person of every insurer subject to registration and scoped into the NAIC liquidity stress test framework must file the results of a specific year's liquidity stress test. The filing must be made to the lead state insurance director or commissioner of the insurance holding company system as determined by the procedures within the financial analysis handbook adopted by the director pursuant to rules promulgated under chapter 1-26.

The NAIC liquidity stress test framework includes scope criteria applicable to a specific data year. The scope criteria are reviewed at least annually by the financial stability task force or its successor. Any change to the NAIC liquidity stress test framework or to the data year for which the scope criteria are to be measured is effective on January first of the year following the calendar year when such changes are adopted. Insurers meeting at least one threshold of the scope criteria are scoped into the NAIC liquidity stress test framework for the specified data year unless the lead state insurance director or commissioner, in consultation with insurance commissioners at the NAIC financial stability task force or its successor, determines the insurer may not be scoped into the framework for that data year. Insurers that do not trigger at least one threshold of the scope criteria are considered scoped out of the NAIC liquidity stress test framework for the specified data year, unless the lead state insurance director or commissioner, in consultation with the NAIC financial stability task force or its successor, determines the insurer should be scoped into the framework for that data year.

The performance of, and filing of the results from, a specific year's liquidity stress test must comply with the NAIC liquidity stress test framework's instructions and reporting templates for that year and any lead state insurance director or commissioner determinations, in consultation with the NAIC financial stability task force or its successor, provided within the framework.

The director may promulgate rules pursuant to chapter 1-26 to establish requirements, standards, criteria, exemptions, and limitations for the liquidity stress test and related filings.

Section 11. That chapter 58-5A be amended with a NEW SECTION:

The group capital calculation and resulting group capital ratio required under section 7 of this Act and the liquidity stress test, along with its results and supporting disclosures, required under section 10 of this Act, are regulatory tools for assessing group risks and capital adequacy and group liquidity risks and may not be used as a means to rank insurers or insurance holding company systems generally. Except as otherwise required under the provisions of this chapter, a licensee under this title is prohibited from releasing information with regard to the group capital calculation, group capital ratio, the liquidity stress test results, or supporting disclosures for the liquidity stress test of any insurer or any insurer group or of any component derived in the calculation by any insurer, broker, or other person engaged in any manner in the insurance business by making, publishing, disseminating, circulating, or placing before the public the information, or causing the information to be directly or indirectly made, published, disseminated, circulated, or placed before the public:

(1) In a newspaper, magazine, or other publication;

(2) In the form of a notice, circular, pamphlet, letter, or poster;

(3) Over any radio or television station;

(4) Any electronic means of communication available to the public; or

(5) In any other way as an advertisement, announcement, or statement.

Section 12. That chapter 58-5A be amended with a NEW SECTION:

If information is released in contradiction of section 11 of this Act, an insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut any materially false statement with respect to the group capital calculation or any resulting group capital ratio, an inappropriate comparison of any amount to an insurer's or insurance group's group capital calculation or resulting group capital ratio, liquidity stress test result, supporting disclosures for the liquidity stress test, or an inappropriate comparison of any amount to an insurer's or insurance group's liquidity stress test result or supporting disclosures is published in any written publication and the insurer is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be.

Section 13. That chapter 58-5A be amended with a NEW SECTION:

If an insurer subject to this chapter is deemed by the director to be in a hazardous financial condition, as defined by chapters 58-4 and 58-29B, or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the director may require the insurer to secure and maintain either a deposit held by the director, or a bond, for the protection of the insurer for the duration of contracts or agreements or the existence of the condition for which the director required the deposit or the bond. In determining whether a deposit or a bond is required, the director may consider whether concerns exist with respect to the affiliated person's ability to fulfill the contracts or agreements if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding and a deposit or bond is necessary, the director has discretion to determine the amount of the deposit or bond, not to exceed the value of the contracts or agreements in any one year, and whether the deposit or bond is required for a single contract, multiple contracts, or a contract only with a specific person or persons.

Section 14. That chapter 58-5A be amended with a NEW SECTION:

All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, must be identifiable, and must be segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in any form maintained, including claims and claim files, policyholder lists, application files, litigation files, premium records, rate books, underwriting manuals, personnel records, and financial records or similar records within the possession, custody, or control of the affiliate. At the request of the insurer, the affiliate must provide the receiver a complete set of all records of any type that pertain to the insurer's business, obtain access to the operating systems on which the data is maintained, obtain the software that runs those systems either through assumption of licensing agreements or otherwise, and restrict the use of the data by the affiliate if it is not operating the insurer's business. The affiliate must provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.

Section 15. That chapter 58-5A be amended with a NEW SECTION:

Premiums and other funds belonging to the insurer that are collected by

or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership is subject to chapter 58-29B.

Section 16. That chapter 58-5A be amended with a NEW SECTION:

Any affiliate that is party to an agreement or contract with a domestic insurer that is referenced in subdivision 58-5A-56(4) is subject to the jurisdiction of any supervision, seizure, conservatorship or receivership proceedings against the insurer and to the authority of any supervisor, conservator, rehabilitator, or liquidator for the insurer appointed pursuant to chapter 58-29B for the purpose of interpreting, enforcing, and overseeing the affiliate's obligations under the agreement or contract to perform services for the insurer that:

(1) Are an integral part of the insurer's operations, including management, administrative, accounting, data processing, marketing, underwriting, claims handling, investment, or any other similar functions; or

(2) Are essential to the insurer's ability to fulfill its obligations under insurance policies.

The director may require that an agreement or contract referenced in subsection 58-5A-21(2)(e), for the provision of services described in subdivisions (1) and (2) of this section, specify that the affiliate consents to the jurisdiction as set forth in this section.

Signed February 12, 2024

Chapter 202
(House Bill 1183)

An Act to modernize the process for annual audits of third-party insurance administrators.

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

Section 1. That § 58-29D-13 be AMENDED:

58-29D-13. If an insurer utilizes the services of an administrator, the insurer ~~shall be~~ is responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to such coverage and for securing reinsurance, if any. The rules pertaining to these matters shall be provided, in writing, by the insurer to the administrator. The responsibilities of the administrator as to any of these matters shall be set forth in the written agreement between the administrator and the insurer. It is the sole responsibility of the insurer to provide for competent administration of its programs.

In cases where an administrator administers benefits for more than one hundred certificate holders on behalf of an insurer, the insurer ~~shall~~ must, at least semiannually, conduct a review of the operations of the administrator. At least one ~~such~~ review ~~shall~~ must be an ~~on-site~~ audit of the operations of the administrator, whether conducted on-site or virtually.

Signed March 5, 2024

Chapter 203

(House Bill 1147)

An Act to address discriminatory acts against entities participating in a 340B drug pricing program.

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

Section 1. That § 58-29D-31 be AMENDED:

58-29D-31. The application or annual renewal ~~shall~~ must be denied and the license or registration of an administrator ~~shall~~ must be suspended or revoked if the director finds that the administrator or applicant:

(1) Is in an unsound financial condition;

(2) Is using ~~such~~ methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public;

(3) Has failed to pay any judgment rendered against it in this state within sixty days after the judgment has become final;

(4) Has violated any lawful rule or order of the director, or any provision of the insurance laws of this state;

(5) Has refused to be examined or to produce its accounts, records, and files for examination, or if any of its officers has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to ~~such~~ the examination, if required by the director;

(6) Has, without just cause, refused to pay proper claims or perform services arising under its contracts or has, without just cause, caused covered individuals to accept less than the amount due them or caused covered individuals to employ attorneys or bring suit against the administrator to secure full payment or settlement of ~~such~~ the claims;

(7) Is affiliated with or under the same general management or interlocking directorate or ownership as another administrator or insurer, which unlawfully transacts business in this state without having a license;

(8) At any time fails to meet any qualification for which issuance of the certificate could have been refused had such failure then existed and been known to the Division of Insurance;

(9) Has been convicted of, or has entered a plea of guilty or nolo contendere to, a felony, without regard to whether adjudication was withheld;

(10) Is under suspension or revocation in another state; ~~or~~

(11) Has supplied false information to the director;

(12) Has engaged in a discriminatory act, as described in § 58-29E-15; or

(13) Has engaged in an unfair act or deceptive practice, as described in § 58-33-135.

Section 2. That § 58-29E-1 be AMENDED:

58-29E-1. Terms used in this chapter mean:

(1) "Brand name," the same as set forth in § 36-11-2;

(2) "Covered individual," a member, participant, enrollee, contract holder, policy holder, or beneficiary of a third-party payor who is provided health coverage by the third-party payor. The term includes a dependent or other individual provided health coverage through a policy, contract, or plan for a covered individual;

(3) "Generic drug," a chemically equivalent copy of a brand name drug with an expired patent;

(4) "Health benefit plan," the same as set forth in § 58-17F-2;

(5) "Health carrier," the same as set forth in § 58-17F-1;

(6) "Interchangeable biological product," the same as set forth in § 36-11-2;

(7) "Maximum allowable cost," the maximum amount that a pharmacy may be reimbursed, as set by a pharmacy benefit manager or a third-party payor, for a brand name or a generic drug, an interchangeable biological product, or any other prescription drug and which may include:

(a) The average acquisition cost;

(b) The national average acquisition cost;

(c) The average manufacturer price;

(d) The average wholesale price;

(e) The brand effective rate;

(f) The generic effective rate;

(g) Discount indexing;

(h) Federal upper limits;

(i) The wholesale acquisition cost; and

(j) Any other term used by a pharmacy benefit manager or a health carrier to establish reimbursement rates for a pharmacy;

(8) "Maximum allowable cost list," a list of prescription drugs that:

(a) Includes the maximum allowable cost for each prescription drug; and

(b) Is used, directly or indirectly, by a pharmacy benefit manager;

(9) "Pharmaceutical manufacturer," any person engaged in the business of preparing, producing, converting, processing, packaging, labeling, or distributing a prescription drug, but not including a wholesale distributor or dispenser;

(10) "Pharmacist," the same as set forth in § 36-11-2;

(11) "Pharmacy," the same as set forth in § 36-11-2;

(12) "Pharmacy benefit management," the procurement of prescription drugs at a negotiated rate for dispensation within this state to covered individuals, the administration or management of prescription drug benefits provided by a third-party payor for the benefit of covered individuals, or any of the following services provided with regard to the administration of pharmacy benefits:

(a) Mail service pharmacy;

(b) Claims processing, retail network management, and payment of claims to pharmacies for prescription drugs dispensed to covered individuals;

(c) Clinical formulary development and management services;

(d) Rebate contracting and administration;

(e) Certain patient compliance, therapeutic intervention, and generic substitution programs; and

(f) Disease management programs involving prescription drug utilization;

(13) "Pharmacy benefit management fee," a fee that covers the cost of providing pharmacy benefit management, but does not exceed the value of the service performed by the pharmacy benefit manager;

(14) "Pharmacy benefit manager," a person that performs pharmacy benefit management, pursuant to a contract or other relationship with a third-party payor and includes:

(a) A person acting in a contractual or employment relationship for a pharmacy benefit manager while providing pharmacy benefit management for a ~~third party~~ third-party payor; and

(b) A mail service pharmacy;

(15) "Pharmacy benefit manager affiliate," a pharmacy that, or a pharmacist who, directly or indirectly, through one or more intermediaries, owns or controls, is owned and controlled by, or is under common ownership or control of, a pharmacy benefit manager;

(16) "Pharmacy network," pharmacies that have contracted with a pharmacy benefit manager to dispense or sell prescription drugs to covered individuals under a health benefit plan for which the prescription drug benefit is managed by a pharmacy benefit manager;

(17) "Prescription drug," a drug classified by the United States Food and Drug Administration as requiring a prescription by a health care practitioner, prior to being administered or dispensed to a patient, and including interchangeable biological products, brand names, and generic drugs;

(18) "Prescription drug benefit," a health benefit plan providing third-party payment or prepayment for prescription drugs;

(19) "Prescription drug order," the same as set forth in § 36-11-2;

(20) "Proprietary information," information on pricing, costs, revenue, taxes, market share, negotiating strategies, customers, and personnel held by a private entity and used for that private entity's business purposes;

(21) "Rebate," a discount or other negotiated price concession that is paid directly or indirectly to a pharmacy benefit manager by a pharmaceutical manufacturer or by an entity in the prescription drug supply chain, other than a covered individual, and which is:

(a) Based on a pharmaceutical manufacturer's list price for a prescription drug;

(b) Based on utilization;

(c) Designed to maintain, for the pharmacy benefit manager, a net price for a prescription drug, during a specified period of time, in the event the pharmaceutical manufacturer's list price increases; or

(d) Based on estimates regarding the quantity of a prescribed drug that will be dispensed by a pharmacy to covered individuals;

(22) "Spread pricing," an amount charged or claimed by a pharmacy benefit manager that is in excess of the ingredient cost for a dispensed prescription drug, plus a dispensing fee paid directly or indirectly to a pharmacy, pharmacist, or other provider, on behalf of the third-party payor, less a pharmacy benefit management fee;

(23) "Third-party payor," any entity, other than a covered individual, a covered individual's representative, or a healthcare provider, which is responsible for any amount of reimbursement for a prescription drug benefit, provided the term includes a health carrier and a health benefit plan;

(24) "340B drug," a drug purchased through the 340B drug discount program by a 340B entity;

(25) "340B drug discount program," a program that imposes limitations on the prices of drugs purchased by covered entities, in accordance with 42 U.S.C. § 256b (January 1, 2024);

(26) "340B entity," a covered entity as defined in 42 U.S.C. § 256b(a)(4) (January 1, 2024);

(27) "Trade secret," the same as set forth in § 37-29-1;

~~(25)~~(28) "Unaffiliated pharmacy," a dispensing pharmacy that is not:

(a) Owned, in whole or in part, by a pharmacy benefit manager;

(b) A subsidiary of a pharmacy benefit manager; or

(c) An affiliate of a pharmacy benefit manager; and

~~(26)~~(29) "Wholesale distributor," the same as set forth in § 36-11A-25.

Section 3. That § 58-29E-10 be AMENDED:

58-29E-10. A third-party payor, 340B entity, or a pharmacy, may bring a civil action to enforce this chapter ~~or~~, including injunctive relief, and seek civil damages for a violation of this chapter.

Section 4. That § 58-29E-15 be AMENDED:

58-29E-15. ~~No~~Neither a pharmacy benefit manager nor a pharmacy benefit manager affiliate may, directly or indirectly, discriminate against a 340B entity or a pharmacy ~~participating in a health plan as an entity authorized to participate under section 340B of the Public Health Service Act, as amended to January 1, 2019, or any pharmacy under contract with such an entity to provide prescriptions. For the purposes of this chapter, a retail pharmacy is any pharmacy licensed under the laws of this state, and no pharmacy benefit manager may, by contract, modify that definition~~ under contract with a 340B entity, on the basis that the 340B entity or a pharmacy under contract with a 340B entity participates in the 340B drug discount program by imposing terms or conditions that differ from a similarly situated entity that does not participate in the 340B drug discount program.

Discriminatory acts include:

(1) Reimbursing a 340B entity at a rate lower than that paid for the same drug to a pharmacy that has a similar prescription volume but is not a 340B entity;

(2) Assessing a fee or cost, imposing a charge back, or imposing any other adjustment against a 340B entity, on the ground that the 340B entity participates in the 340B drug discount program;

(3) Restricting access by a 340B entity to a pharmacy network on the ground that the 340B entity participates in the 340B drug discount program;

(4) Requiring that a 340B entity contract with a specific pharmacy or health coverage plan as a condition of participating in a pharmacy network;

(5) Imposing a new restriction or an additional charge on a patient who elects to receive a prescription drug through a 340B entity;

(6) Restricting the method by which a 340B entity may dispense or deliver 340B drugs.

(7) Auditing a 340B entity, as provided for under § 58-29F-1, more frequently than similarly situated entities that do not participate in the 340B drug discount program;

(8) Refusing to provide reimbursement or coverage for 340B drugs that are part of a formulary;

(9) Basing prescription drug benefit coverage or formulary decisions on:

(a) The 340B status of a drug, including price or availability; or

(b) Whether a dispensing pharmacy participates in 340B drug pricing;

(10) Imposing on a 340B entity any requirement or restriction that interferes with the entity's ability to maximize the value of the discounts obtained through participation in the 340B drug discount program; and

(11) Imposing on a 340B entity any contractual terms and conditions that differ from those imposed on a similarly situated entity that is not a 340B entity.

Section 5. That a NEW SECTION be added to chapter 58-29E:

A pharmacy benefit manager or a pharmacy benefit manager affiliate who has engaged in a discriminatory act, as prohibited in § 58-29E-15, is liable to the 340B entity for damages, including actual and consequential damages, and is liable for reasonable attorneys' fees and costs.

Section 6. That § 58-33-135 be AMENDED:

58-33-135. The following acts or practices by a pharmacy benefits manager are declared to be ~~false,~~ misleading, deceptive, or unfair:

(1) Prohibiting a pharmacist or pharmacy ~~for~~ from providing cost-sharing information ~~on~~ regarding the amount that a covered individual may pay for a particular prescription drug ~~by~~ from a pharmacist or pharmacy; ~~or~~

(2) Penalizing a pharmacist or pharmacy for providing cost-sharing information on the amount that a covered individual may pay for a particular prescription drug ~~by~~ from a pharmacist or pharmacy; and

(3) Committing a discriminatory act, as prohibited in § 58-29E-15.

Section 7. This Act is effective beginning January 1, 2025.

Signed March 4, 2024

Chapter 204

(Senate Bill 41)

An Act to modify an administrative procedure for revoking a nonresponsive insurance producer's license.

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

Section 1. That chapter 58-30 be amended with a NEW SECTION:

If the director has reasonable evidence that a licensed insurance producer has violated any provision of this title and the licensed producer has also violated subdivision 58-33-66(1) for failing to respond to division inquiries regarding the same, the director may, after sufficient notice, revoke the producer's license by an order of the director without a hearing. An order under this section must include the applicable provisions of § 58-4-16 and chapter 1-26 for final agency decisions and must be accompanied by exhibits demonstrating the alleged violations.

For purposes of this section, the term "sufficient notice" means:

(1) The producer is provided notice of the alleged violations at the producer's last reported mailing address on file with the director; and

(2) The producer is provided a second notice at the producer's last reported mailing address on file with the director stating the producer is in violation of § 58-33-66 and must respond to avoid administrative action by the division.

Section 2. That chapter 58-30 be amended with a NEW SECTION:

An order under section 1 of this Act must allow sixty days for the producer to request a hearing in writing. If a timely request for hearing is received, the director shall issue a notice of hearing within thirty days. The office of hearing examiners shall hold the hearing, review the director's order with the evidence presented at hearing, and issue a proposed decision. If a producer does not timely request a hearing, the director's order revoking the license becomes the final agency decision pursuant to § 1-26-25.

Signed February 5, 2024

Chapter 205

(House Bill 1091)

An Act to enact the Interstate Insurance Product Regulation Compact.

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

Section 1. That a NEW SECTION be added to title 58:

The state of South Dakota hereby enacts the Interstate Insurance Product Regulation Compact:

Interstate Insurance Product Regulation Compact

Article I. Purposes

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

(2) To develop uniform standards for insurance products covered under the compact;

(3) To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more compacting states;

(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) To create the Interstate Insurance Product Regulation Commission; and

(7) To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. Definitions

For the purposes of this compact:

(1) "Advertisement" means any material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy as more specifically defined in the rules and operating procedures of the commission;

(2) "Bylaws" mean those bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct;

(3) "Commission" means the Interstate Insurance Product Regulation Commission established by this compact;

(4) "Commissioner" means the chief insurance regulatory official of a state including, but not limited to commissioner, superintendent, director, or administrator;

(5) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to article XIV, section 1, or been terminated pursuant to article XIV, section 2;

(6) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry;

(7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this Act;

(8) "Member" means the person chosen by a compacting state as its representative to the commission, or his or her designee;

(9) "Non-compacting state" means any state which is not at the time a compacting state;

(10) "Operating procedures" mean procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact;

(11) "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an insurer is authorized to issue;

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to article VII of this compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states;

(13) "State" means any state, district, or territory of the United States of America;

(14) "Third-party filer" means an entity that submits a product filing to the commission on behalf of an insurer; and

(15) "Uniform standard" means a standard adopted by the commission for a product line, pursuant to article VII of this compact, and shall include all of the product requirements in aggregate; provided, that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

Article III. Establishment of the Commission and Venue

(1) The compacting states hereby create and establish a joint public agency known as the Interstate Insurance Product Regulation Commission. Pursuant to article IV, the commission will have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards; provided, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the state where filed.

(2) The commission is a body corporate and politic, and an instrumentality of the compacting states.

(3) The commission is solely responsible for its liabilities except as otherwise specifically provided in this compact.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located.

Article IV. Powers of the Commission

The commission shall have the following powers:

(1) To promulgate rules, pursuant to article VII of this compact, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

(2) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the uniform standards established by the commission for long-term care insurance products;

(3) To receive and review in an expeditious manner products filed with the commission, rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;

(4) To receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission shall have the authority to require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in the compact;

(5) To exercise its rule-making authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission;

(6) To promulgate operating procedures, pursuant to article VII of this compact, which shall be binding in the compacting states to the extent and in the manner provided in this compact;

(7) To bring and prosecute legal proceedings or actions in its name as the commission; provided, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) To establish and maintain offices;

(10) To purchase and maintain insurance and bonds;

(11) To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;

(12) To hire employees, professionals, or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact, and determine their qualifications; and to establish the commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety;

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any appearance of impropriety;

(15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

(16) To remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;

(17) To enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;

(18) To provide for dispute resolution among compacting states;

(19) To advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of this compact;

(20) To provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments;

(21) To establish a budget and make expenditures;

(22) To borrow money;

(23) To appoint committees, including advisory committees comprising of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;

(24) To provide and receive information from and to cooperate with law enforcement agencies;

(25) To adopt and use a corporate seal; and

(26) To perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission

(1) Membership, Voting, and Bylaws

(a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she shall be appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(b) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two-thirds of the members vote in favor thereof.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including, but not limited to:

(i) Establishing the fiscal year of the commission;

(ii) Providing reasonable procedures for appointing and electing members and holding meetings of the management committee;

(iii) Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees and (ii) governing any general or specific delegation of any authority or function of the commission;

(iv) Providing reasonable procedures for calling and conducting meetings of the commission that consists of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public (i) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and (ii) votes taken during such meeting;

(v) Establishing the titles, duties, and authority and reasonable procedures for the election of the officers of the commission;

(vi) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;

(vii) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(viii) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and/or reserving of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto with the appropriate agency or officer in each of the compacting states.

(2) Management committee, officers, and personnel

(a) A management committee, comprising of no more than fourteen members shall be established as follows:

(i) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products determined from the records of the NAIC for the prior year;

(ii) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(iii) Four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(b) The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

(i) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(ii) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard, provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;

(iii) Overseeing the offices of the commission; and

(iv) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the commission.

(c) The commission shall elect annually officers from the management committee, with each having such authority and duties as may be specified in the bylaws.

(d) The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission may deem appropriate. The executive director shall serve as secretary to the commission but shall not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

(3) Legislative and advisory committees

(a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee, provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry and the other comprising of insurance industry representatives.

(c) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(4) Corporate records of the commission

The commission shall maintain its corporate books and records in accordance with the bylaws.

(5) Qualified immunity, defense, and indemnification

(a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of that person.

(b) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission

employment, duties, or responsibilities, provided that nothing herein shall be construed to prohibit that person from retaining his or her own counsel and provided further, that the actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct.

(c) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. Meetings and Acts of the Commission

(1) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

(2) Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the commission. A member shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of communication.

(3) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

Article VII. Rules and operating procedures: Rulemaking functions of the commission and opting out of uniform standards

(1) Rulemaking authority. The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(2) Rulemaking procedure. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

(3) Effective date and opt out of a uniform standard. A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine, provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" shall be defined as any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures and amendments thereto shall

become effective as of the date specified in each rule, operating procedure, or amendment.

(4) Opt-out procedure.

(a) A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must (a) give written notice to the commission no later than ten business days after the uniform standard is promulgated or at the time the state becomes a compacting state and (b) find that the uniform standard does not provide reasonable protections to the citizens of the state given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:

(i) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this Act; and

(ii) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

Notwithstanding the foregoing, a compacting state may, at the time of its enactment of this compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing for such opt out in the enacted compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Such an opt out shall be effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(b) In accordance with subdivision (a), South Dakota opts out of all existing and prospective uniform standards involving long-term care insurance products in order to preserve South Dakota's statutory requirements governing long-term care insurance products.

(c) In accordance with subdivision (a), South Dakota opts out of all existing uniform standards involving individual and group disability income insurance products in order to preserve South Dakota's statutory requirements governing individual and group disability income insurance products.

(5) Effect of opt out. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform Standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV for withdrawals.

(6) Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner, and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days unless affirmatively extended by the commission, provided a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(7) Not later than thirty days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure, provided that the filing of such a petition shall not stay or otherwise prevent the rule or operating procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the commission consistent with applicable law and shall not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

Article VIII. Commission records and enforcement

(1) The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(2) Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement and further provided, that, except as otherwise expressly provided in this Act, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any non-complying compacting state in writing of its noncompliance with commission bylaws, rules. or operating procedures. If a non-complying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in article XIV.

(4) The commissioner of any state in which an insurer is authorized to do business or is conducting the business of insurance shall continue to exercise his or her authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the compact is governed by the following provisions:

(a) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement shall not constitute a violation of the provisions, standards, or requirements of the compact except upon a final order of the commission, issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

(b) Before a commissioner may bring an action for violation of any provision, standard, or requirement of the compact relating to the content of an advertisement not approved or certified to the commission, the commission or an authorized commission officer or employee must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

Article IX. Dispute resolution

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and non-compacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

Article X. Product filing and approval

(1) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

(2) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding any provision herein to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission will provide public access to product filing information. In establishing such rules, the commission shall consider the interests of the public in having access to such information, as well as protection of personal, medical, and financial information and trade secrets, that may be contained in a product filing or supporting information.

(3) Any product approved by the commission may be sold or otherwise issued in those compacting states for which the insurer is legally authorized to do business.

Article XI. Review of commission decisions regarding filings

(1) Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 4.

(2) The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in section 1 above.

Article XII. Finance

(1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of its duties shall not be compromised.

(2) The commission shall collect a filing fee from each insurer and third-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

(3) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII of this compact.

(4) The commission shall be exempt from all taxation in and by the compacting states.

(5) The commission shall not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

(6) The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to

the Governor and Legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts shall not be confidential, and such materials may be shared with the commissioner of any compacting state upon request, provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

(7) No compacting state shall have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

Article XIII. Compacting states, effective date, and amendment

(1) Any state is eligible to become a compacting state.

(2) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states, provided the commission shall become effective for purposes of adopting uniform standards, for reviewing and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, and disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(3) Amendments to the compact may be proposed by the commission for enactment by the compacting states. No amendment shall become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Article XIV. Withdrawal, default, and termination

(1) Withdrawal

(a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified or any advertisement of such products on the date the repealing statute becomes effective, except by mutual agreement of the commission and the withdrawing state, unless the approval is rescinded by the withdrawing state as provided in paragraph (e) of this section.

(c) The commissioner of the withdrawing state shall immediately notify the management committee in writing upon the introduction of legislation repealing this compact in the withdrawing state.

(d) The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice thereof.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal,

including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

(2) Default

(a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws, or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include, but are not limited to, failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission, product self-certifications, or any advertisement in connection with such product that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 1 of this article.

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact.

(3) Dissolution of compact

(a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(b) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up, and any surplus funds shall be distributed in accordance with the bylaws.

Article XV. Severability and construction

(1) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

(2) The provisions of this compact shall be liberally construed to effectuate its purposes.

Article XVI. Binding effect of compact and other laws

(1) Other laws

(a) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph (b) of this section.

(b) For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

(i) The access of any person to state courts;

(ii) Remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

(iii) State law relating to the construction of insurance contracts; or

(iv) The authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings as authorized by law.

(c) All insurance products filed with individual states shall be subject to the laws of those states.

(2) Binding effect of this compact

(a) All lawful actions of the commission, including all rules and operating procedures promulgated by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over the meaning or interpretation of commission actions and upon a majority vote of the compacting states, the commission may issue advisory opinions regarding the meaning or interpretation in dispute.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the Legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state

and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

Signed February 27, 2024

REEMPLOYMENT ASSISTANCE

Chapter 206
(Senate Bill 208)

An Act to establish reporting requirements for future fund awards or grants and to make technical changes.

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

Section 1. That § 61-5-29.1 be AMENDED:

61-5-29.1. There is hereby created in the state treasury a special revenue fund to be known as the employer's investment in South Dakota's future fund. ~~Such fund shall~~ Moneys in the fund must be used for purposes related to research and economic development for the state. ~~Expenditures from such fund are subject to the provisions of chapters 4-7, 4-8A and 4-8B.~~

Section 2. That a NEW SECTION be added to chapter 61-5:

The Governor's Office of Economic Development shall report to either the Joint Committee on Appropriations or the Interim Committee on Appropriations on a biannual basis the following for each award or grant made from the fund:

(1) The name of the recipient and the amount of the award or grant;

(2) The location of the recipient;

(3) The research or economic development purpose being funded;

(4) The measures being used to determine the economic impact of the award or grant; and

(5) The number of jobs created or retained, if any.

Signed March 14, 2024

Chapter 207
(Senate Bill 190)

An Act to require a comparison of reemployment assistance recipients against death records for reemployment assistance eligibility integrity.

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

Section 1. That § 61-6-68 be AMENDED:

61-6-68. Each month, the Department of Labor and Regulation ~~shall~~ must:

(1) Compare the list of reemployment assistance recipients with new hire records and the state's New Hire Data and the National Directory of New Hires to verify eligibility; ~~and~~

(2) Check the list of reemployment assistance recipients against the Department of Corrections' list of incarcerated individuals to verify eligibility and ensure program integrity; and

(3) Match the list of reemployment assistance recipients against the death records maintained as vital statistics records by the Department of Health and the Social Security Administration master death file.

The Department of Labor and Regulation may execute a memorandum of understanding with any department, agency, or division to share information under this section.

Signed March 14, 2024

WORKERS' COMPENSATION

Chapter 208

(Senate Bill 88)

An Act to provide information to an injured employee about eligibility in a program offered by a nonprofit organization.

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

Section 1. That § 62-6-5 be AMENDED:

62-6-5. Information obtained within the contemplation of this title shall be used for no other purpose than for the information of the department or insurance company with reference to the duties imposed upon the department. However, the department may release information to an injured employee or the employee's attorney, to a social security or welfare office having a claim by the employee, or to any state or federal agency which rehabilitates persons with disabilities. The department may issue statistical information if individual claimants are not identified.

The department may provide to an injured employee, a surviving spouse, or other dependent of an injured employee information of a program offered by a nonprofit organization that offers a benefit specific to a work-related injury and that the injured employee, the surviving spouse, or other dependent of the injured employee may be eligible to receive. The department may not provide the contact information of an injured employee, a surviving spouse, or other dependent of an

injured employee to a nonprofit organization without the express written consent of the injured employee, the surviving spouse, or other dependent of an injured employee.

Signed February 14, 2024

UNCODIFIED ACTS

Chapter 209

(Senate Joint Resolution 502)

A JOINT RESOLUTION, Providing legislative approval for a future use water permit application by the Lewis and Clark Regional Water System.

Section 1. WHEREAS, pursuant to § 46-5-20.1, any application for an appropriation of water, in excess of ten thousand acre-feet annually, must be presented by the Water Management Board to the Legislature for approval, prior to action by the board; and

Section 2. WHEREAS, pursuant to § 46-5-20.1, the Lewis and Clark Regional Water System submitted a future use water permit application numbered 8754-3 to the chief engineer of the water rights program within the Department of Agriculture and Natural Resources, seeking to have annually appropriated and reserved nineteen thousand one hundred and twenty-one acre-feet of unappropriated water from the Missouri: Elk Point Aquifer for the purpose of providing future water supplies to the Lewis and Clark Regional Water System, which is located in the South Dakota counties of Clay, Lake, Lincoln, McCook, Minnehaha, Turner, and Union; in the Iowa counties of Lyon, O'Brien, Osceola, and Sioux; and in the Minnesota counties of Nobles and Rock; and

Section 3. WHEREAS, the chief engineer, pursuant to § 46-2A-2, considered the permit application and recommended approval, with qualifications, because there is a reasonable probability that unappropriated water is available for the proposed use, the quantity of water sought to be reserved will be needed by the Lewis and Clark Regional Water System, the proposed use is a beneficial use, and the proposed use is in the public interest; and

Section 4. WHEREAS, after a public hearing held on July 12, 2023, in Pierre, South Dakota, the Water Management Board moved to present the application to the Legislature with a recommendation of approval, subject to the following qualifications:

(1) That Future Use Water Permit No. 8754-3 annually reserve nineteen thousand one hundred twenty-one acre-feet from the Missouri: Elk Point Aquifer;

(2) That Future Use Water Permit No. 8754-3 is approved with the stipulation that it is subject to review, every seven years, by the Water Management Board and subject to cancellation if the board determines, during a seven-year review, that the Lewis and Clark Regional Water System cannot demonstrate a reasonable need for the permit; and

(3) That at the time plans are made to construct the works and put the water reserved by Future Use Water Permit No. 8754-3 to beneficial use, an

application for all or part of the reserved water must be submitted to the Water Management Board, pursuant to § 46-5-38.1:

Section 5. NOW, THEREFORE, BE IT RESOLVED, by the House of Representatives of the Ninety-Ninth Legislature of the State of South Dakota, the Senate concurring therein, that the Lewis and Clark Regional Water System's Future Use Water Permit No. 8754-3 is approved and returned to the Water Management Board for final action.

Filed February 2, 2024

Chapter 210

(Senate Bill 170)

An Act to repeal and replace an appropriation regarding the South Dakota women's prison and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $5,750,000 to the Department of Corrections, for purposes of designing, renovating, constructing, furnishing, and equipping the expansion of the healthcare services areas in the South Dakota Women's Prison, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, and other services and improvements as may be required.

Section 2. The Bureau of Administration, pursuant to chapter 5-14, shall supervise the design, renovation, and construction of facilities approved by this Act.

Section 3. The commissioner of the Bureau of Administration and the secretary of the Department of Corrections shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. That 2022 Session Laws, chapter 194 be REPEALED:

~~Section 1. There is hereby appropriated the sum of $5,750,000 in federal fund expenditure authority to the Department of Corrections for the purpose of design, renovation, construction, furnishing, and equipping the expansion of the healthcare services areas in the South Dakota Women's Prison, including heating, air conditioning, plumbing, water, sewer, electric facilities, architectural and engineering services, and other services and improvements as may be required.~~

~~Section 2. The Department of Corrections may adjust such cost estimates to reflect inflation as measured by the Building Cost Index, reported by the Engineering News Record, and additional expenditures required to comply with regulations adopted after the effective date of this Act. However, any adjustments to construction cost estimates for the project may not exceed one hundred and twenty five percent of the estimated project construction cost stated in section 1 of this Act.~~

~~Section 3. The Bureau of Administration, pursuant to chapter 5-14, shall supervise the design, renovation, and construction of facilities approved by this Act.~~

~~Section 4. The commissioner of the Bureau of Administration and the secretary of the Department of Corrections shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.~~

~~Section 5. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.~~

~~Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.~~

Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

Chapter 211

(House Bill 1062)

An Act to make an appropriation for costs related to the suppression of wildfires impacting the state and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $2,250,931 to the state fire suppression special revenue fund, for costs related to the suppression of wildfires impacting this state.

Section 2. The secretary of the Department of Public Safety shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 14, 2024

Chapter 212
(Senate Bill 44)

An Act to make an appropriation to reimburse health care professionals who have complied with the requirements for health care recruitment assistance programs, and to declare an emergency.

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

Section 1. There is appropriated from the general fund the sum of $403,363 to the Department of Health, for the purposes of reimbursing one family physician, two dentists, two physician assistants, and one nurse practitioner who have, in the determination of the department, met the requirements of § 34-12G-3.

Section 2. There is also appropriated from the general fund the sum of $297,500 to the Department of Health, for the purposes of reimbursing eligible health care practitioners who have, in the determination of the department, met the requirements of § 34-12G-12.

Section 3. The secretary of the Department of Health shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed February 14, 2024

Chapter 213
(House Bill 1049)

An Act to authorize the Board of Regents to accept and use easement proceeds for the purposes authorized by the 2022 Session Laws, chapter 198.

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

Section 1. The Board of Regents may accept and use the proceeds from the grant of easements over or across the property located at the NE1/4NW1/4 of Section 34 and the S1/2SW1/4 of Section 27, all in Township 2 North, Range 8 East of the B.H.M, Pennington County, for the design, renovation, and construction of the addition for the health sciences center at Black Hills State University–Rapid City, authorized by the 2022 Session Laws, chapter 198.

Section 2. Any proceeds received by the Board of Regents pursuant to section 1 of this Act shall be deposited into the special fund created by the 2022 Session Laws chapter 198, and expended in accordance with the provisions of that chapter.

Signed February 20, 2024

Chapter 214
(House Bill 1129)

An Act to repeal the session law authorizing the Board of Regents to contract for the design and construction of a new dairy research and extension farm on the campus of South Dakota State University, and to declare an emergency.

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

Section 1. That 2021 Session Laws, chapter 240 be REPEALED:

~~Section 1. The Board of Regents may contract for the design and construction of a new dairy research and extension farm on the campus of South Dakota State University in Brookings, together with furnishings and equipment, including heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and engineering services, and other services or actions as may be required to accomplish the project.~~

~~Section 2. There is hereby appropriated from the general fund the sum of $7,500,000 and the sum of $7,500,000 in other fund expenditure authority, together with any additional sums received pursuant to section 4 of this Act, for the purposes authorized in section 1 of this Act.~~

~~Section 3. The cost estimates contained in this Act have been stated in terms of 2020 values. The Board of Regents may adjust such cost estimates to reflect inflation as measured by the Building Cost Index, reported by the Engineering News Record, and additional expenditures required to comply with regulations adopted after the effective date of this Act. However, any adjustments to construction cost estimates for the project may not exceed one hundred twenty five percent of the estimated project construction cost stated in section 1 of this Act.~~

~~Section 4. The Board of Regents may accept, transfer, and expend any funds obtained for the projects authorized in this Act from federal sources, donations, or any other external sources, all of which comprise a special fund for the benefitted project.~~

~~Section 5. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.~~

~~Section 6. The executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.~~

~~Section 7. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.~~

~~Section 8. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.~~

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

Signed February 28, 2024

Chapter 215

(Senate Bill 50)

An Act to make an appropriation for the site preparation and construction of a prison facility for offenders committed to the Department of Corrections in Rapid City, to transfer moneys to the incarceration construction fund, and to declare an emergency.

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

Section 1. There is hereby appropriated the sum of $2,420,154 in federal fund expenditure authority, for the expenditure of State Fiscal Recovery Fund moneys authorized by the American Rescue Plan Act, for installing the water and sewer infrastructure of a prison facility for offenders committed to the Department of Corrections in Rapid City as established by 2023 Session Laws, chapter 192, § 1.

Section 2. There is also hereby appropriated the sum of $20,892,179 from the incarceration construction fund created in § 1-15-37 for the purposes provided in 2023 Session Laws, chapter 192, § 1.

Section 3. The state treasurer shall transfer the sum of $20,892,179 from the general fund to the incarceration construction fund for the future construction of the prison facility described in this Act.

Section 4. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.

Section 5. The secretary of the Department of Corrections shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 7. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 6, 2024

Chapter 216
(Senate Bill 171)

An Act to make and change an appropriation related to the construction of the new state public health laboratory and to declare an emergency.

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

Section 1. That 2023 Session Laws, chapter 209, § 1 be AMENDED:

Section 1. There is hereby appropriated from the general fund the sum of ~~$12,800,000~~ $7,050,000 to the Department of Health, for cost increases related to the new state public health laboratory established under 2022 Session Laws, chapter 208, § 1 and 2.

Section 2. There is hereby appropriated the sum of $5,750,000 in federal fund expenditure authority, to the Department of Health, for cost increases related to the new state public health laboratory established under 2022 Session Laws, chapter 208, §§ 1 and 2.

Section 3. The secretary of the Department of Health shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

Chapter 217
(House Bill 1061)

An Act to make an appropriation for costs related to emergencies and disasters impacting the state and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $4,276,341 to the special emergency and disaster special revenue fund for costs related to any emergency or disaster, as defined in § 34-48A-1.

Section 2. The secretary of the Department of Public Safety shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

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

Signed March 18, 2024

Chapter 218

(House Bill 1064)

An Act to make an appropriation for increases in the construction costs of infrastructure at Lake Alvin and Newell Lake, and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $1,995,604 to the Department of Game, Fish and Parks, for the purpose of contracting for the construction, reconstruction, renovation, and modernization of infrastructure at Lake Alvin and Newell Lake, as authorized in 2022 Session Laws, chapter 213.

Section 2. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Administration, as provided in chapter 5-14.

Section 3. The secretary of the Department of Game, Fish and Parks shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 14, 2024

Chapter 219

(House Bill 1201)

An Act to make an appropriation for the teacher apprenticeship pathway program.

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

Section 1. There is hereby appropriated from the general fund the sum of $800,000 to the Department of Labor and Regulation, for purposes of continuing the teacher apprenticeship pathway program.

Section 2. The secretary of the Department of Labor and Regulation shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. This Act is effective beginning June 25, 2024.

Signed March 13, 2024

Chapter 220

(Senate Bill 70)

An Act to make an appropriation for the replacement of the Richmond Lake dam and spillway, for the general maintenance and repair of other state-owned dams, and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $3,150,200 and the sum of $10,649,800 in federal fund expenditure authority to the Office of School and Public Lands, for purposes of replacing the Richmond Lake dam and spillway and for the general maintenance and repair of other state-owned dams.

Section 2. The commissioner of the School and Public Lands shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 15, 2024

Chapter 221

(Senate Bill 66)

An Act to make an appropriation for eligible water, wastewater, and storm water projects throughout state government, and to declare an emergency.

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

Section 1. There is hereby appropriated the sum of $12,826,696 in federal fund expenditure authority for the expenditure of state fiscal recovery fund American Rescue

Plan Act moneys to the Bureau of Administration for eligible state agency water, wastewater, and storm water projects as established in 2022 Session Laws, chapter 202.

Section 2. The commissioner of the Bureau of Administration, the secretary of the Department of Corrections, the adjutant general, the secretary of the Department of Game, Fish and Parks, the executive director of the Board of Regents, the secretary of the Department of Agriculture and Natural Resources, the secretary of the Department of Social Services, the secretary of the Department of Human Services, the secretary of the Department of Transportation, the secretary of the Department of Veterans' Affairs, and the secretary of the Department of Education shall approve vouchers for eligible projects administered by the officials' respective department, and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 15, 2024

Chapter 222
(Senate Bill 67)

An Act to provide for the sale of certain real estate located in Hughes County and to provide for the deposit of the proceeds into a continuously appropriated fund.

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

Section 1. Upon the request of the Governor, the commissioner of school and public lands, on behalf of the State of South Dakota, shall sell all or any portion of the following real estate and any related personal property and improvements located on the property to the State of South Dakota, acting by and through its Department of Transportation:

> Certain property described generally as the South 200 feet of the N1/2N1/2SW1/4NE1/4 of Section 34, Township 111 North, Range 79 West of the 5th P.M., consisting of Parts of Lots 1 through 6, Block 1, Baird's First Addition, and the South 200 feet of the N1/2N1/2SE1/4NE1/4 of Section 34, Township 111 North, Range 79 West of the 5th P.M; All lying east of Highway right-of-way, north of Lot H-1, and west of Arthur Street, in the City of Pierre, Hughes County, South Dakota.

Section 2. Any real estate and related personal property and improvements on the property that are generally considered a part of the tracts described in section 1 of this Act but not specifically included in the legal descriptions set out in section 1 of this Act may be sold as provided in this Act as though the property and improvements were specifically described in section 1 of this Act.

Section 3. The real estate and other property described in section 1 of this Act must be sold for the value of three hundred sixty thousand dollars on the terms and conditions as the Governor may require, subject to all applicable constitutional reservations.

Section 4. The proceeds from the sale of the real estate and other property described in section 1 of this Act shall be deposited into the capitol complex maintenance and repair fund.

Signed March 14, 2024

Chapter 223
(House Bill 1065)

An Act to make an appropriation for the design and construction of a multi-use building on the grounds of the State Fair and to declare an emergency.

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

Section 1. The Department of Agriculture and Natural Resources may contract for the planning, site preparation, construction, furnishing, and equipping of a multi-use building on the grounds of the State Fair, together with any heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and engineering services, and any other services or actions required to accomplish the project, for an estimated cost of $8,000,000.

Section 2. The Department of Agriculture and Natural Resources may relocate and repurpose the structure known as the 4-H beef exhibits building on the grounds of the State Fair or demolish and dispose of the structure. This project includes any action reasonably necessary to prepare the lot for use by the State Fair.

Section 3. There is hereby appropriated the sum of $4,000,000 in general funds and the sum of $4,000,000 in other fund expenditure authority to the Department of Agriculture and Natural Resources, for purposes described in sections 1 and 2 of this Act.

Section 4. The Department of Agriculture and Natural Resources may accept, transfer, and expend any funds obtained, for the projects authorized in this Act, from federal sources, donations, or any other external sources, all of which comprise a special fund for the benefitted projects. All moneys deposited into the fund are hereby appropriated to the projects, subject to any limitations set forth in sections 1 and 3 of this Act.

Section 5. The administration of the projects authorized in this Act shall be under the general charge and supervision of the Bureau of Administration, as provided in chapter 5-14.

Section 6. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 7. Any amounts appropriated in this Act, not lawfully expended or obligated, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 8. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 14, 2024

Chapter 224

(Senate Bill 49)

An Act to make an appropriation for the site preparation of a prison facility for offenders committed to the Department of Corrections, to transfer moneys to the incarceration construction fund, and to declare an emergency.

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

Section 1. That section 2 of chapter 195 of the 2023 Session Laws be AMENDED:

The Department of Corrections is hereby authorized to contract for the planning and site preparation of a prison facility for offenders committed to the Department of Corrections, including architectural services, engineering services, utilities, and other services as may be required to accomplish the project.

Section 2. There is hereby appropriated the sum of $10,000,000 in federal fund expenditure authority, for the expenditure of State Fiscal Recovery Fund moneys authorized by the American Rescue Plan Act, for installing the water and sewer infrastructure of a prison facility for offenders committed to the Department of Corrections as established by 2023 Session Laws, chapter 195, § 2.

Section 3. The state treasurer shall transfer the sum of $132,449,532 from the general fund and the sum of $93,629,262 from the budget reserve fund to the incarceration construction fund created in § 1-15-37 for the future construction of the prison facility described in this Act.

Section 4. The administration of the design and construction of the project authorized in this Act shall be under the general charge and supervision of the Bureau of Administration as provided in chapter 5-14.

Section 5. The secretary of the Department of Corrections shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 7. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

Chapter 225
(Senate Bill 45)

An Act to make an appropriation for the establishment of a Center for Quantum Information Science and Technology and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $3,034,444 to the Board of Regents, for the purpose of establishing a Center for Quantum Information Science and Technology.

Section 2. The executive director of the Board of Regents shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2029, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 13, 2024

Chapter 226
(Senate Bill 83)

An Act to make an appropriation for the revised construction costs of maintenance shops for the Wildland Fire Suppression Division and to declare an emergency.

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

Section 1. There is appropriated from the general fund the sum of $700,000 to the Department of Public Safety for covering increased costs related to the construction of a maintenance shop for the Wildland Fire Suppression Division in Rapid City as established in 2023 Session Laws, chapter 196, § 1.

Section 2. There is appropriated from the general fund the sum of $700,000 to the Department of Public Safety for covering increased costs related to the construction of a maintenance shop for the Wildland Fire Suppression Division in Hot Springs as established in 2023 Session Laws, chapter 197, § 1.

Section 3. The secretary of the Department of Public Safety shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 18, 2024

Chapter 227

(House Bill 1022)

An Act to make an appropriation to the Department of Education to provide professional development in literacy to teachers, and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $6,000,000 to the Department of Education, for the purpose of providing professional development to teachers in the subject of literacy education based on the science of reading.

Section 2. The secretary of the Department of Education shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 13, 2024

Chapter 228

(Senate Bill 209)

An Act to make an appropriation for grants to assisted living centers and nursing facilities for costs related to telemedicine.

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

Section 1. There is hereby appropriated $5,000,000 in federal fund expenditure authority, for the expenditure of state fiscal recovery fund American Rescue Plan Act moneys, to the Department of Health, for purposes of providing grants to assisted living centers and nursing facilities, licensed in accordance with chapter 34-12, to purchase and install technology and infrastructure for telemedicine.

Section 2. The secretary of the Department of Health shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. This Act is effective June 30, 2024.

Signed March 18, 2024

Chapter 229

(Senate Bill 187)

An Act to make an appropriation to establish a cybersecurity services initiative for counties and municipalities and to declare an emergency.

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

Section 1. There is hereby appropriated from the general fund the sum of $7,000,000 to the Office of the Attorney General, for purposes of creating a cybersecurity services initiative for counties and municipalities throughout the State of South Dakota.

Section 2. The funds appropriated in section 1 of this Act must be used exclusively to expand and improve cybersecurity for counties and municipalities in the State of South Dakota, via any infrastructure and technology that can protect the information technology assets of counties and municipalities in South Dakota, and for administrative costs necessary for expending these dollars efficiently and effectively.

Section 3. Funds must be disbursed according to the specific needs of the project and in such a way that best advances the cybersecurity needs of the counties and municipalities to be served.

Section 4. The Office of the Attorney General shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act

Section 5. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 6. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 13, 2024

Chapter 230

(Senate Bill 168)

An Act to make an appropriation for victim services.

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

Section 1. There is hereby appropriated from the general fund the sum of $5,000,000 to the Office of the Attorney General, for the purpose of providing grants to organizations that assist:

(1) Children who have been abused or neglected;

(2) Victims of domestic violence; and

(3) Victims of sexual assault.

Section 2. The Office of the Attorney General shall annually provide grants in accordance with section 1 of this Act on the basis of applications received during the period beginning July first and ending August thirty-first, of each year.

Recipients may use the grants for:

(1) The provision of emergency and transitional services, including food, lodging, and transportation;

(2) The provision of counseling services;

(3) The support of a crisis line;

(4) Case management and facility staffing needs; and

(5) Existing facility needs, including repair and maintenance.

The Office of the Attorney General may award grants for any request not receiving full funding from any other agency of this state. The Office of the Attorney General may expend moneys from the appropriation provided in section 1 of this Act for the administrative costs necessary in providing the grants in this section.

Section 3. The attorney general shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. This Act is effective beginning June 25, 2024.

Signed March 18, 2024

Chapter 231

(Senate Bill 53)

An Act to make an appropriation for eligible water and wastewater projects and to declare an emergency.

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

Section 1. There is appropriated the sum of $89,384,221 in federal fund expenditure authority to the Board of Water and Natural Resources for the purpose of providing grants for eligible water and wastewater projects previously awarded American Rescue Plan Act state fiscal recovery funds. The projects must comply with federal guidance regarding use of the American Rescue Plan Act state fiscal recovery funds. Moneys must be provided according to the terms and conditions established by the board.

Section 2. There is appropriated the sum of $28,000,000 in federal fund expenditure authority to the Board of Water and Natural Resources for the expenditure of state fiscal recovery fund money authorized by the American Rescue Plan Act. The Board of Water and Natural Resources shall obligate these moneys only if Acts previously approved by the Legislature for the use of American Recue Plan Act state fiscal recovery funds contain moneys that are not obligated, as required by the state entity to which they were appropriated, prior to the required deadlines in federal guidance. Moneys must be provided according to the terms and conditions established by the board.

Section 3. The secretary of the Department of Agriculture and Natural Resources shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2027, shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Signed March 15, 2024

Chapter 232
(Senate Bill 80)

An Act to improve technology equipment for providers of elderly care and to make an appropriation therefor.

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

Section 1. There is hereby appropriated from the general fund the sum of $2,000,000 to the Department of Human Services, for providing grants to select providers for the purchase of technology equipment that would improve the quality of life and health outcomes of elderly residents and support health care workers.

Section 2. A select provider must be a state-licensed Medicaid provider that primarily serves elderly patients. A select provider shall fill out an application detailing what technology equipment will be used, the expected outcomes in terms of the quality of life and health outcomes for the provider's residents and support for the provider's health care workers to fulfill the worker's duties, and any other information necessary for the department to evaluate an application.

Section 3. Before any moneys are expended under this Act, the Department of Human Services shall evaluate each application based on the criteria on the application submitted in section 2 of this Act. The moneys appropriated in this Act must be expended for the technology equipment described in the approved application.

Section 4. The department shall provide a report to the Joint Committee on Appropriations detailing how the grants were used. The report shall include providers

awarded a grant using the moneys in this Act, amount of money awarded to each provider, technology equipment purchased, the use of the technology equipment, and the number of patients served through the grant.

Section 5. The secretary of the Department of Human Services shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 7. This Act is effective beginning June 29, 2024.

Signed March 18, 2024

Chapter 233

(House Bill 1093)

An Act to make an appropriation to provide a grant for the construction of a facility to provide certain health facilities and services.

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

Section 1. There is hereby appropriated from the general fund the sum of $6,000,000 to the Department of Social Services, for purposes of providing a grant to assist in the construction of a facility that will provide all of the following: a specialty rehabilitation pediatric hospital, a specialty school for children under twenty-one, an intermediate health care facility for children under twenty-one, and outpatient rehabilitation pediatric services.

Section 2. The secretary of the Department of Social Services shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. This Act is effective beginning June 30, 2024.

Signed March 18, 2024

Chapter 234

(Senate Bill 144)

An Act to make an appropriation for grants to support airport terminal infrastructure projects and terminal improvement and expansion.

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

Section 1. There is hereby appropriated from the general fund the sum of $10,000,000 to the Aeronautics Commission for grants to support the improvement, expansion, and

future capacity demands of terminals at public airports. The Aeronautics Commission shall make grants pursuant to § 50-2-12.

Section 2. The secretary of the Department of Transportation shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 3. Any amounts appropriated in this Act not lawfully expended or obligated shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 4. This Act is effective beginning June 30, 2024.

Signed March 15, 2024

Chapter 235

(Senate Bill 52)

An Act to revise the General Appropriations Act for fiscal year 2024.

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

Section 1. That section 2 of chapter 211 of the 2023 Session Laws be amended to read:

OFFICE OF THE GOVERNOR

(3) Governor's Office of Economic Development

Operating Expenses, Federal Funds, delete "$28,669,970" and insert "$9,717,970"

Section 2. That section 3 of chapter 211 of the 2023 Session Laws be amended to read:

BUREAU OF FINANCE AND MANAGEMENT (BFM)

(3) Coronavirus Stimulus Pool

Operating Expenses, Federal Funds, delete "$100,000,000" and insert "$30,000,000"

(6) Employee Compensation and Billing Pools

Personal Services, General Funds, delete "$65,082,132" and insert "$66,086,367"

Personal Services, Federal Funds, delete "$27,059,748" and insert "$25,926,416"

Personal Services, Other Funds, delete "$69,060,881" and insert "$69,097,078"

Operating Expenses, General Funds, delete "$2,643,031" and insert "$4,765,023"

Operating Expenses, Federal Funds, delete "$1,455,510" and insert "$3,444,512"

Operating Expenses, Other Funds, delete "$4,430,477" and insert "$10,288,400"

Section 3. That section 4 of chapter 211 of the 2023 Session Laws be amended to read:

BUREAU OF ADMINISTRATION (BOA)

(2) Central Services

Operating Expenses, Other Funds, delete "$19,601,992" and insert "$19,608,594"

(7) Risk Management Administration - Informational

Operating Expenses, Other Funds, delete "$3,474,158" and insert "$7,924,158"

(8) Risk Management Claims - Informational

Operating Expenses, Other Funds, delete "$2,226,476" and insert "$6,626,476"

Section 4. That section 5 of chapter 211 of the 2023 Session Laws be amended to read:

BUREAU OF INFORMATION AND TELECOMMUNICATIONS (BIT)

(1) Data Centers

Operating Expenses, Other Funds, delete "$6,086,626" and insert "$6,462,068"

(4) South Dakota Public Broadcasting

Operating Expenses, Federal Funds, delete "$272,484" and insert "$5,845,547"

(6) State Radio Engineering

Operating Expenses, General Funds, delete "$3,420,565" and insert "$3,676,565"

Section 5. That section 9 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF TOURISM

(1) Tourism

Operating Expenses, Federal Funds, delete "$8,750,000" and insert "$11,533,533"

Section 6. That section 12 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF SOCIAL SERVICES

(3) Medical Services

Operating Expenses, General Funds, delete "$360,088,669" and insert "$278,757,687"

Operating Expenses, Federal Funds, delete "$1,091,247,910" and insert "$720,950,720"

(4) Children's Services

Operating Expenses, General Funds, delete "$53,701,709" and insert "$53,075,371"

Operating Expenses, Federal Funds, delete "$66,086,985" and insert "$96,713,323"

(5) Behavioral Health

Personal Services, General Funds, delete "$36,515,675" and insert "$36,388,804"

Personal Services, Federal Funds, delete "$9,684,888" and insert "$9,811,759"

Operating Expenses, General Funds, delete "$92,662,880" and insert "$92,729,853"

Operating Expenses, Federal Funds, delete "$60,406,375" and insert "$67,744,852"

Section 7. That section 13 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF HEALTH

(1) Administration, Secretary of Health

Operating Expenses, General Funds, delete "$1,870,091" and insert "$1,861,541"

Operating Expenses, Federal Funds, delete "$12,558,893" and insert "$35,256,490"

(2) Licensure and Accreditation

Operating Expenses, General Funds, delete "$1,358,599" and insert "$1,413,730"

Operating Expenses, Federal Funds, delete "$1,213,689" and insert "$4,719,466"

(3) Family and Community Health

Operating Expenses, Federal Funds, delete "$34,942,335" and insert "$60,417,552"

(6) Epidemiology, Surveillance & Informatics

Operating Expenses, Federal Funds, delete "$3,079,031" and insert "$8,008,539"

(11) Board of Medical and Osteopathic Examiners - Informational

Operating Expenses, Other Funds, delete "$585,354" and insert "$2,985,354"

Section 8. That section 14 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF LABOR AND REGULATION

(1) Administration, Secretary of Labor

Personal Services, Other Funds, delete "$209,078" and insert "$370,688"

Operating Expenses, Federal Funds, delete "$7,942,694" and insert "$8,492,694"

Operating Expenses, Other Funds, delete "$109,203" and insert "$2,029,211"

F.T.E, delete "52.6" and insert "59.6"

(3) Job Service

Personal Services, Federal Funds, delete "$11,335,924" and insert "$9,648,776"

Personal Services, Other Funds, delete "$0" and insert "$378,915"

Operating Expenses, General Funds, delete "$124,214" and insert "$233,684"

Operating Expenses, Federal Funds, delete "$2,712,481" and insert "$2,738,818"

Operating Expenses, Other Funds, delete "$0" and insert "$50,020"

F.T.E, delete "167.0" and insert "150.0"

(14) Banking

Personal Services, Other Funds, delete "$3,834,387" and insert "$4,017,723"

Operating Expenses, Other Funds, delete "$1,107,203" and insert "$1,183,920"

Section 9. That section 16 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF EDUCATION

(1) General Administration

Personal Services, Federal Funds, delete "$1,456,164" and insert "$1,690,283"

Operating Expenses, Federal Funds, delete "$150,770,975" and insert "$232,428,275"

(3) State Aid to General Education

Operating Expenses, General Funds, delete "$592,301,908" and insert "$577,078,558"

(8) Technical Colleges

Operating Expenses, General Funds, delete "$38,988,722" and insert "$44,585,297"

(9) Education Resources

Personal Services, Federal Funds, delete "$4,026,759" and insert "$4,112,200"

Operating Expenses, General Funds, delete "$8,324,293" and insert "$8,320,019"

Operating Expenses, Federal Funds, delete "$185,859,133" and insert "$189,769,189"

Operating Expenses, Other Funds, delete "$737,326" and insert "$1,988,546"

Section 10. That section 17 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF PUBLIC SAFETY

(2) Highway Patrol

Operating Expenses, Other Funds, delete "$8,950,238" and insert "$9,028,270"

Section 11. That section 18 of chapter 211 of the 2023 Session Laws be amended to read:

BOARD OF REGENTS

(1) Board of Regents Central Office

Operating Expenses, General Funds, delete "$27,177,812" and insert "$44,012,416"

(3) South Dakota Scholarships

Operating Expenses, General Funds, delete "$6,534,519" and insert "$6,134,519"

(4) University of South Dakota

Operating Expenses, General Funds, delete "$4,494,852" and insert "$4,696,820"

Operating Expenses, Other Funds, delete "$40,931,405" and insert "$42,931,405"

(7) South Dakota State University

Operating Expenses, General Funds, delete "$7,470,025" and insert "$8,215,995"

Operating Expenses, Other Funds, delete "$71,119,211" and insert "$79,119,211"

(8) SDSU Extension

Operating Expenses, Federal Funds, delete "$3,294,905" and insert "$4,044,905"

(9) Agricultural Experiment Station

Personal Services, Federal Funds, delete "$5,811,425" and insert "$6,311,425"

Personal Services, Other Funds, delete "$6,181,011" and insert "$6,311,011"

Operating Expenses, Federal Funds, delete "$5,869,911" and insert "$17,369,911"

Operating Expenses, Other Funds, delete "$9,837,942" and insert "$14,837,942"

F.T.E, delete "236.3" and insert "244.3"

(10) SD School of Mines and Technology

Operating Expenses, General Funds, delete "$1,685,766" and insert "$1,593,284"

(11) Northern State University

Operating Expenses, General Funds, delete "$1,095,622" and insert "$1,012,086"

(13) Black Hills State University

Operating Expenses, General Funds, delete "$1,133,064" and insert "$1,129,590"

Operating Expenses, Other Funds, delete "$11,166,088" and insert "$12,226,857"

(14) Dakota State University

Operating Expenses, General Funds, delete "$886,987" and insert "$859,455"

Operating Expenses, Other Funds, delete "$19,245,519" and insert "$19,695,519"

(15) SD School for the Deaf

Operating Expenses, General Funds, delete "$695,225" and insert "$695,957"

Operating Expenses, Other Funds, delete "$464,711" and insert "$584,711"

(16) SD School for the Blind and Visually Impaired

Operating Expenses, General Funds, delete "$621,867" and insert "$613,735"

Section 12. That section 19 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF THE MILITARY

(2) Army Guard

Operating Expenses, General Funds, delete "$2,882,924" and insert "$2,842,994"

Operating Expenses, Federal Funds, delete "$16,079,480" and insert "$15,943,016"

(3) Air Guard

Operating Expenses, General Funds, delete "$353,992" and insert "$321,006"

Operating Expenses, Federal Funds, delete "$3,435,048" and insert "$3,336,090"

Section 13. That section 20 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF VETERANS' AFFAIRS

(1) Veterans' Benefits and Services

Operating Expenses, General Funds, delete "$619,054" and insert "$626,491"

(2) State Veterans' Home

Personal Services, General Funds, delete "$2,225,412" and insert "$2,168,279"

Personal Services, Federal Funds, delete "$3,273,770" and insert "$3,330,903"

Operating Expenses, General Funds, delete "$0" and insert "$847,420"

Operating Expenses, Other Funds, delete "$3,653,797" and insert "$2,797,963"

Section 14. That section 21 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF CORRECTIONS

(2) Mike Durfee State Prison

Operating Expenses, General Funds, delete "$8,314,130" and insert "$8,626,022"

(3) State Penitentiary

Operating Expenses, General Funds, delete "$8,241,983" and insert "$9,047,623"

(4) Women's Prison

Operating Expenses, General Funds, delete "$2,692,284" and insert "$7,319,298"

(6) Inmate Services

Personal Services, General Funds, delete "$16,514,131" and insert "$6,514,131"

Personal Services, Federal Funds, delete "$71,270" and insert "$10,071,270"

(8) Juvenile Community Corrections

Operating Expenses, General Funds, delete "$9,814,934" and insert "$10,239,038"

Operating Expenses, Federal Funds, delete "$2,786,439" and insert "$2,602,937"

Section 15. That section 22 of chapter 211 of the 2023 Session Laws be amended to read:

DEPARTMENT OF HUMAN SERVICES

(2) Developmental Disabilities

Operating Expenses, General Funds, delete "$107,598,732" and insert "$97,794,104"

Operating Expenses, Federal Funds, delete "$171,283,702" and insert "$162,313,017"

Operating Expenses, Other Funds, delete "$7,595,974" and insert "$7,489,769"

(3) South Dakota Developmental Center - Redfield

Personal Services, General Funds, delete "$7,339,805" and insert "$7,130,976"

Personal Services, Federal Funds, delete "$11,273,921" and insert "$11,482,750"

Operating Expenses, General Funds, delete "$2,206,045" and insert "$2,124,750"

Operating Expenses, Federal Funds, delete "$3,187,541" and insert "$3,195,973"

(4) Long Term Services and Supports

Operating Expenses, General Funds, delete "$130,210,931" and insert "$120,566,070"

Operating Expenses, Federal Funds, delete "$193,272,309" and insert "$186,717,982"

(5) Rehabilitation Services

Operating Expenses, General Funds, delete "$4,806,484" and insert "$4,735,804"

Operating Expenses, Federal Funds, delete "$14,772,634" and insert "$14,843,314"

Section 16. That section 27 of chapter 211 of the 2023 Session Laws be amended to read:

OFFICE OF THE ATTORNEY GENERAL

(2) Criminal Investigation

Operating Expenses, General Funds, delete "$3,040,961" and insert "$3,315,961"

Operating Expenses, Federal Funds, delete "$2,367,043" and insert "$3,372,375"

Section 17. That section 29 of chapter 211 of the 2023 Session Laws be amended to read:

SECRETARY OF STATE

(1) Secretary of State

Operating Expenses, General Funds, delete "$631,900" and insert "$678,300"

Section 18. Adjust all totals accordingly in sections 1 to 17, inclusive, of this Act.

Section 19. That chapter 211 of the 2023 Session Laws be amended by adding thereto NEW SECTION to read:

Section 40. The state treasurer shall transfer to the IT Modernization Fund the sum of seven million eighteen thousand seven hundred and eighty dollars ($7,018,780) from the state general fund.

Section 20. Funds appropriated by this Act which are unspent at the end of Fiscal year 2024 may be carried over to fiscal year 2025.

Section 21. This Act is effective beginning June 26, 2024.

Signed March 18, 2024

Chapter 236
(House Bill 1259)

An Act to appropriate money for the ordinary expenses of the legislative, judicial, and executive departments of the state, the current expenses of state institutions, interest on the public debt, and for common schools.

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

Section 1. There is hereby appropriated out of any money in the state treasury not otherwise appropriated the following sums of money or expenditure authority, or so much thereof as may be necessary, for the ordinary expenses of the legislative, judicial, and executive departments of the state, certain officers, boards, and

commissions, and support and maintenance of the educational, charitable, and penal institutions of the state for the fiscal year ending June 30, 2025.

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
SECTION 2. OFFICE OF THE GOVERNOR				
(1) Office of the Governor				
Personal Services	$2,336,104	$0	$0	$2,336,104
Operating Expenses	$507,959	$0	$0	$507,959
Total	$2,844,063	$0	$0	$2,844,063
FTE				21.5
(2) Governor's Contingency Fund				
Operating Expenses	$75,000	$0	$0	$75,000
Total	$75,000	$0	$0	$75,000
FTE				0.0
(3) Governor's Office of Economic Development				
Personal Services	$2,988,150	$384,824	$938,739	$4,311,713
Operating Expenses	$2,336,146	$28,672,199	$39,422,778	$70,431,123
Total	$5,324,296	$29,057,023	$40,361,517	$74,742,836
FTE				41.6
(4) SD Housing Development Authority - Informational				
Personal Services	$0	$2,137,939	$5,565,525	$7,703,464
Operating Expenses	$0	$787,726	$12,739,778	$13,527,504
Total	$0	$2,925,665	$18,305,303	$21,230,968
FTE				76.0
(5) SD Science and Tech Authority - Informational				
Personal Services	$0	$0	$488,639	$488,639
Operating Expenses	$0	$0	$1,850,094	$1,850,094
Total	$0	$0	$2,338,733	$2,338,733
FTE				6.7
(6) Ellsworth Authority - Informational				
Operating Expenses	$0	$0	$847,450	$847,450
Total	$0	$0	$847,450	$847,450
FTE				0.0
(7) REDI Grants				
Operating Expenses	$0	$0	$1,626,608	$1,626,608
Total	$0	$0	$1,626,608	$1,626,608
FTE				0.0
(8) Local Infrastructure Improvement				
Operating Expenses	$1,470,000	$0	$1,470,000	$2,940,000
Total	$1,470,000	$0	$1,470,000	$2,940,000
FTE				0.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(9) Economic Development Partnership				
Operating Expenses	$0	$0	$50,000	$50,000
Total	$0	$0	$50,000	$50,000
FTE				0.0
(10) SD Housing Opportunity				
Operating Expenses	$1,040,000	$0	$3,040,000	$4,080,000
Total	$1,040,000	$0	$3,040,000	$4,080,000
FTE				0.0
(11) Workforce Education				
Operating Expenses	$490,000	$0	$0	$490,000
Total	$490,000	$0	$0	$490,000
FTE				0.0
(12) Lt. Governor				
Personal Services	$26,454	$0	$0	$26,454
Operating Expenses	$14,945	$0	$0	$14,945
Total	$41,399	$0	$0	$41,399
FTE				0.5
(13) DEPARTMENT TOTAL, OFFICE OF THE GOVERNOR				
Personal Services	$5,350,708	$2,522,763	$6,992,903	$14,866,374
Operating Expenses	$5,934,050	$29,459,925	$61,046,708	$96,440,683
Total	$11,284,758	$31,982,688	$68,039,611	$111,307,057
FTE				146.3

SECTION 3. BUREAU OF FINANCE AND MANAGEMENT (BFM)

(1) Bureau of Finance and Management				
Personal Services	$1,144,924	$0	$3,675,421	$4,820,345
Operating Expenses	$324,376	$0	$4,639,907	$4,964,283
Total	$1,469,300	$0	$8,315,328	$9,784,628
FTE				44.0
(2) Computer Services and Development				
Operating Expenses	$0	$0	$2,000,000	$2,000,000
Total	$0	$0	$2,000,000	$2,000,000
FTE				0.0
(3) Coronavirus Stimulus Pool				
Operating Expenses	$0	$30,000,000	$0	$30,000,000
Total	$0	$30,000,000	$0	$30,000,000
FTE				0.0
(4) Building Authority - Informational				
Personal Services	$0	$0	$3,122	$3,122

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$0	$0	$1,154,565	$1,154,565
Total	$0	$0	$1,157,687	$1,157,687
FTE				0.0
(5) Health and Education Facilities Authority - Informational				
Personal Services	$0	$0	$678,042	$678,042
Operating Expenses	$0	$0	$278,339	$278,339
Total	$0	$0	$956,381	$956,381
FTE				5.0
(6) Employee Compensation and Billing Pools				
Personal Services	$21,470,516	$7,458,079	$21,646,549	$50,575,144
Operating Expenses	$3,434,530	$2,164,728	$9,163,696	$14,762,954
Total	$24,905,046	$9,622,807	$30,810,245	$65,338,098
FTE				0.0
(7) Educational Enhancement Funding Corporation - Informational				
Operating Expenses	$0	$0	$139,955	$139,955
Total	$0	$0	$139,955	$139,955
FTE				0.0
(8) DEPARTMENT TOTAL, BUREAU OF FINANCE AND MANAGEMENT (BFM)				
Personal Services	$22,615,440	$7,458,079	$26,003,134	$56,076,653
Operating Expenses	$3,758,906	$32,164,728	$17,376,462	$53,300,096
Total	$26,374,346	$39,622,807	$43,379,596	$109,376,749
FTE				49.0

SECTION 4. BUREAU OF HUMAN RESOURCES AND ADMINISTRATION (BHRA)

(1) Administrative Services				
Personal Services	$0	$0	$378,755	$378,755
Operating Expenses	$683	$0	$121,824	$122,507
Total	$683	$0	$500,579	$501,262
FTE				2.3
(2) Central Services				
Personal Services	$249,321	$0	$8,981,570	$9,230,891
Operating Expenses	$219,541	$0	$19,560,794	$19,780,335
Total	$468,862	$0	$28,542,364	$29,011,226
FTE				131.5
(3) State Engineer				
Personal Services	$0	$0	$1,606,274	$1,606,274
Operating Expenses	$0	$0	$328,354	$328,354
Total	$0	$0	$1,934,628	$1,934,628
FTE				16.0
(4) Statewide Maintenance and Repair				

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$19,880,221	$500,000	$3,839,246	$24,219,467
Total	$19,880,221	$500,000	$3,839,246	$24,219,467
FTE				0.0
(5) Office of Hearing Examiners				
Personal Services	$370,264	$0	$0	$370,264
Operating Expenses	$86,784	$0	$0	$86,784
Total	$457,048	$0	$0	$457,048
FTE				3.0
(6) Obligation Recovery Center				
Operating Expenses	$0	$0	$720,000	$720,000
Total	$0	$0	$720,000	$720,000
FTE				0.0
(7) Risk Management Administration - Informational				
Personal Services	$0	$0	$1,641,705	$1,641,705
Operating Expenses	$0	$0	$9,292,359	$9,292,359
Total	$0	$0	$10,934,064	$10,934,064
FTE				13.0
(8) Risk Management Claims - Informational				
Operating Expenses	$0	$0	$6,726,476	$6,726,476
Total	$0	$0	$6,726,476	$6,726,476
FTE				0.0
(9) Captive Insurance Pool				
Operating Expenses	$0	$0	$1,836,000	$1,836,000
Total	$0	$0	$1,836,000	$1,836,000
FTE				0.0
(10) Personnel Management/Employee Benefits				
Personal Services	$300,456	$0	$6,059,122	$6,359,578
Operating Expenses	$66,192	$0	$3,241,491	$3,307,683
Total	$366,648	$0	$9,300,613	$9,667,261
FTE				71.2
(11) DEPARTMENT TOTAL, BUREAU OF HUMAN RESOURCES AND ADMINISTRATION (BHRA)				
Personal Services	$920,041	$0	$18,667,426	$19,587,467
Operating Expenses	$20,253,421	$500,000	$45,666,544	$66,419,965
Total	$21,173,462	$500,000	$64,333,970	$86,007,432
FTE				237.0

SECTION 5. BUREAU OF INFORMATION AND TELECOMMUNICATIONS (BIT)

(1) Data Centers				
Personal Services	$0	$0	$7,454,806	$7,454,806

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$0	$0	$6,127,385	$6,127,385
Total	$0	$0	$13,582,191	$13,582,191
FTE				66.0
(2) Development				
Personal Services	$0	$0	$15,387,295	$15,387,295
Operating Expenses	$0	$0	$2,319,244	$2,319,244
Total	$0	$0	$17,706,539	$17,706,539
FTE				142.0
(3) Telecommunications Services				
Personal Services	$0	$0	$10,929,911	$10,929,911
Operating Expenses	$0	$0	$17,888,707	$17,888,707
Total	$0	$0	$28,818,618	$28,818,618
FTE				99.0
(4) South Dakota Public Broadcasting				
Personal Services	$3,863,915	$0	$1,536,153	$5,400,068
Operating Expenses	$1,519,140	$272,484	$2,911,676	$4,703,300
Total	$5,383,055	$272,484	$4,447,829	$10,103,368
FTE				63.5
(5) BIT Administration				
Personal Services	$0	$0	$1,905,165	$1,905,165
Operating Expenses	$0	$0	$4,550,210	$4,550,210
Total	$0	$0	$6,455,375	$6,455,375
FTE				15.0
(6) State Radio Engineering				
Personal Services	$1,170,985	$12,867	$17,494	$1,201,346
Operating Expenses	$3,518,206	$85,913	$145,591	$3,749,710
Total	$4,689,191	$98,780	$163,085	$4,951,056
FTE				11.0
(7) DEPARTMENT TOTAL, BUREAU OF INFORMATION AND TELECOMMUNICATIONS (BIT)				
Personal Services	$5,034,900	$12,867	$37,230,824	$42,278,591
Operating Expenses	$5,037,346	$358,397	$33,942,813	$39,338,556
Total	$10,072,246	$371,264	$71,173,637	$81,617,147
FTE				396.5

SECTION 6. DEPARTMENT OF REVENUE

(1) Administration, Secretary of Revenue				
Personal Services	$0	$0	$3,038,243	$3,038,243
Operating Expenses	$0	$0	$1,878,090	$1,878,090
Total	$0	$0	$4,916,333	$4,916,333
FTE				30.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(2) Business Tax				
Personal Services	$0	$0	$5,893,833	$5,893,833
Operating Expenses	$0	$0	$1,162,020	$1,162,020
Total	$0	$0	$7,055,853	$7,055,853
FTE				70.5
(3) Motor Vehicles				
Personal Services	$0	$0	$3,690,359	$3,690,359
Operating Expenses	$0	$360,789	$6,858,556	$7,219,345
Total	$0	$360,789	$10,548,915	$10,909,704
FTE				49.0
(4) Property Taxes				
Personal Services	$832,599	$0	$0	$832,599
Operating Expenses	$284,622	$0	$0	$284,622
Total	$1,117,221	$0	$0	$1,117,221
FTE				9.0
(5) Audits				
Personal Services	$0	$0	$5,414,830	$5,414,830
Operating Expenses	$0	$0	$667,461	$667,461
Total	$0	$0	$6,082,291	$6,082,291
FTE				56.0
(6) Instant and On-line Operations - Informational				
Personal Services	$0	$0	$1,993,868	$1,993,868
Operating Expenses	$0	$0	$61,006,190	$61,006,190
Total	$0	$0	$63,000,058	$63,000,058
FTE				21.0
(7) Video Lottery				
Personal Services	$0	$0	$955,513	$955,513
Operating Expenses	$0	$0	$1,964,814	$1,964,814
Total	$0	$0	$2,920,327	$2,920,327
FTE				10.0
(8) Commission on Gaming - Informational				
Personal Services	$0	$0	$1,425,771	$1,425,771
Operating Expenses	$0	$0	$9,809,999	$9,809,999
Total	$0	$0	$11,235,770	$11,235,770
FTE				16.0
(9) DEPARTMENT TOTAL, DEPARTMENT OF REVENUE				
Personal Services	$832,599	$0	$22,412,417	$23,245,016
Operating Expenses	$284,622	$360,789	$83,347,130	$83,992,541
Total	$1,117,221	$360,789	$105,759,547	$107,237,557

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
FTE				261.5

SECTION 7. DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES

(1) Administration, Secretary of Agriculture				
Personal Services	$1,173,915	$448,551	$320,140	$1,942,606
Operating Expenses	$839,414	$852,757	$361,710	$2,053,881
Total	$2,013,329	$1,301,308	$681,850	$3,996,487
FTE				19.0
(2) Agricultural and Environmental Services				
Personal Services	$3,743,580	$3,520,969	$3,314,009	$10,578,558
Operating Expenses	$570,295	$3,057,558	$1,331,369	$4,959,222
Total	$4,313,875	$6,578,527	$4,645,378	$15,537,780
FTE				95.9
(3) Resource Conservation & Forestry				
Personal Services	$1,819,523	$1,554,624	$397,847	$3,771,994
Operating Expenses	$419,246	$1,527,393	$1,758,573	$3,705,212
Total	$2,238,769	$3,082,017	$2,156,420	$7,477,206
FTE				45.1
(4) Animal Industry Board				
Personal Services	$2,440,224	$1,522,506	$167,851	$4,130,581
Operating Expenses	$476,775	$738,698	$3,561,021	$4,776,494
Total	$2,916,999	$2,261,204	$3,728,872	$8,907,075
FTE				42.0
(5) American Dairy Association - Informational				
Operating Expenses	$0	$0	$5,321,771	$5,321,771
Total	$0	$0	$5,321,771	$5,321,771
FTE				0.0
(6) Wheat Commission - Informational				
Personal Services	$0	$0	$197,075	$197,075
Operating Expenses	$0	$0	$1,389,064	$1,389,064
Total	$0	$0	$1,586,139	$1,586,139
FTE				2.0
(7) Oilseeds Council - Informational				
Personal Services	$0	$0	$1,942	$1,942
Operating Expenses	$0	$0	$426,500	$426,500
Total	$0	$0	$428,442	$428,442
FTE				0.0
(8) Soybean Research and Promotion Council - Informational				
Personal Services	$0	$0	$826,555	$826,555
Operating Expenses	$0	$0	$15,514,061	$15,514,061

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$0	$0	$16,340,616	$16,340,616
FTE				9.0
(9) Brand Board - Informational				
Personal Services	$0	$0	$2,248,681	$2,248,681
Operating Expenses	$0	$0	$528,321	$528,321
Total	$0	$0	$2,777,002	$2,777,002
FTE				35.0
(10) Corn Utilization Council - Informational				
Operating Expenses	$0	$0	$4,934,783	$4,934,783
Total	$0	$0	$4,934,783	$4,934,783
FTE				0.0
(11) Board of Veterinary Medical Examiners - Informational				
Personal Services	$0	$0	$3,311	$3,311
Operating Expenses	$0	$0	$56,781	$56,781
Total	$0	$0	$60,092	$60,092
FTE				0.0
(12) Pulse Crops Council - Informational				
Personal Services	$0	$0	$1,940	$1,940
Operating Expenses	$0	$0	$67,950	$67,950
Total	$0	$0	$69,890	$69,890
FTE				0.0
(13) State Fair				
Personal Services	$0	$0	$1,466,810	$1,466,810
Operating Expenses	$325,631	$0	$3,154,546	$3,480,177
Total	$325,631	$0	$4,621,356	$4,946,987
FTE				21.5
(14) Financial and Technical Assistance				
Personal Services	$2,038,875	$1,252,868	$897,603	$4,189,346
Operating Expenses	$413,304	$1,395,851	$200,020	$2,009,175
Total	$2,452,179	$2,648,719	$1,097,623	$6,198,521
FTE				32.0
(15) Office of Water				
Personal Services	$1,543,868	$1,574,053	$1,150,126	$4,268,047
Operating Expenses	$442,562	$1,268,438	$584,114	$2,295,114
Total	$1,986,430	$2,842,491	$1,734,240	$6,563,161
FTE				50.0
(16) Livestock Cleanup Fund - Informational				
Operating Expenses	$0	$0	$765,000	$765,000
Total	$0	$0	$765,000	$765,000

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
FTE				0.0
(17) Regulated Response Fund - Informational				
Operating Expenses	$0	$0	$1,750,001	$1,750,001
Total	$0	$0	$1,750,001	$1,750,001
FTE				0.0
(18) Petroleum Release Compensation				
Personal Services	$0	$0	$377,090	$377,090
Operating Expenses	$0	$0	$77,035	$77,035
Total	$0	$0	$454,125	$454,125
FTE				3.0
(19) Petroleum Release Compensation - Informational				
Operating Expenses	$0	$0	$2,100,000	$2,100,000
Total	$0	$0	$2,100,000	$2,100,000
FTE				0.0
(20) DEPARTMENT TOTAL, DEPARTMENT OF AGRICULTURE AND NATURAL RESOURCES				
Personal Services	$12,759,985	$9,873,571	$11,370,980	$34,004,536
Operating Expenses	$3,487,227	$8,840,695	$43,882,620	$56,210,542
Total	$16,247,212	$18,714,266	$55,253,600	$90,215,078
FTE				354.5

SECTION 8. DEPARTMENT OF TOURISM

(1) Tourism				
Personal Services	$0	$0	$2,657,345	$2,657,345
Operating Expenses	$0	$8,750,000	$20,804,921	$29,554,921
Total	$0	$8,750,000	$23,462,266	$32,212,266
FTE				34.7
(2) Arts				
Personal Services	$0	$71,419	$362,942	$434,361
Operating Expenses	$0	$972,881	$1,020,658	$1,993,539
Total	$0	$1,044,300	$1,383,600	$2,427,900
FTE				4.0
(3) DEPARTMENT TOTAL, DEPARTMENT OF TOURISM				
Personal Services	$0	$71,419	$3,020,287	$3,091,706
Operating Expenses	$0	$9,722,881	$21,825,579	$31,548,460
Total	$0	$9,794,300	$24,845,866	$34,640,166
FTE				38.7

SECTION 9. DEPARTMENT OF GAME, FISH AND PARKS

(1) Administration, Secretary of Game, Fish and Parks				
Personal Services	$189,582	$0	$2,131,384	$2,320,966
Operating Expenses	$822,103	$0	$1,611,708	$2,433,811

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$1,011,685	$0	$3,743,092	$4,754,777
FTE				23.3
(2) Wildlife - Informational				
Personal Services	$0	$6,225,535	$20,776,272	$27,001,807
Operating Expenses	$0	$12,459,607	$23,438,119	$35,897,726
Total	$0	$18,685,142	$44,214,391	$62,899,533
FTE				297.5
(3) Wildlife, Development, and Improvement - Informational				
Operating Expenses	$0	$6,712,500	$4,462,500	$11,175,000
Total	$0	$6,712,500	$4,462,500	$11,175,000
FTE				0.0
(4) State Parks and Recreation				
Personal Services	$3,849,349	$1,242,071	$10,903,765	$15,995,185
Operating Expenses	$2,448,111	$2,989,915	$12,171,623	$17,609,649
Total	$6,297,460	$4,231,986	$23,075,388	$33,604,834
FTE				254.0
(5) State Parks and Recreation - Development and Improvement				
Operating Expenses	$0	$3,914,500	$8,800,000	$12,714,500
Total	$0	$3,914,500	$8,800,000	$12,714,500
FTE				0.0
(6) Snowmobile Trails - Informational				
Personal Services	$0	$0	$496,064	$496,064
Operating Expenses	$0	$0	$964,352	$964,352
Total	$0	$0	$1,460,416	$1,460,416
FTE				9.1
(7) DEPARTMENT TOTAL, DEPARTMENT OF GAME, FISH AND PARKS				
Personal Services	$4,038,931	$7,467,606	$34,307,485	$45,814,022
Operating Expenses	$3,270,214	$26,076,522	$51,448,302	$80,795,038
Total	$7,309,145	$33,544,128	$85,755,787	$126,609,060
FTE				583.9

SECTION 10. DEPARTMENT OF TRIBAL RELATIONS

(1) Office of Tribal Relations				
Personal Services	$661,452	$0	$0	$661,452
Operating Expenses	$161,977	$0	$196,000	$357,977
Total	$823,429	$0	$196,000	$1,019,429
FTE				7.0
(2) DEPARTMENT TOTAL, DEPARTMENT OF TRIBAL RELATIONS				
Personal Services	$661,452	$0	$0	$661,452
Operating Expenses	$161,977	$0	$196,000	$357,977

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$823,429	$0	$196,000	$1,019,429
FTE				7.0

SECTION 11. DEPARTMENT OF SOCIAL SERVICES

(1) Administration, Secretary of Social Services

Personal Services	$7,253,696	$8,755,865	$13,091	$16,022,652
Operating Expenses	$7,303,163	$13,965,525	$13,072	$21,281,760
Total	$14,556,859	$22,721,390	$26,163	$37,304,412
FTE				210.2

(2) Economic Assistance

Personal Services	$13,368,234	$17,497,659	$33,089	$30,898,982
Operating Expenses	$25,929,460	$95,698,210	$1,056,842	$122,684,512
Total	$39,297,694	$113,195,869	$1,089,931	$153,583,494
FTE				363.5

(3) Medical Services

Personal Services	$3,017,270	$4,804,425	$0	$7,821,695
Operating Expenses	$380,789,968	$937,431,917	$280,701	$1,318,502,586
Total	$383,807,238	$942,236,342	$280,701	$1,326,324,281
FTE				86.0

(4) Children's Services

Personal Services	$16,447,054	$11,708,431	$2,444,186	$30,599,671
Operating Expenses	$53,811,045	$45,779,714	$2,342,066	$101,932,825
Total	$70,258,099	$57,488,145	$4,786,252	$132,532,496
FTE				342.3

(5) Behavioral Health

Personal Services	$40,513,663	$10,417,468	$228,262	$51,159,393
Operating Expenses	$98,842,112	$61,589,403	$4,052,179	$164,483,694
Total	$139,355,775	$72,006,871	$4,280,441	$215,643,087
FTE				567.5

(6) Board of Counselor Examiners - Informational

Personal Services	$0	$0	$7,316	$7,316
Operating Expenses	$0	$0	$100,497	$100,497
Total	$0	$0	$107,813	$107,813
FTE				0.0

(7) Board of Psychology Examiners - Informational

Personal Services	$0	$0	$10,110	$10,110
Operating Expenses	$0	$0	$76,173	$76,173
Total	$0	$0	$86,283	$86,283
FTE				0.0

(8) Board of Social Work Examiners - Informational

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Personal Services	$0	$0	$7,132	$7,132
Operating Expenses	$0	$0	$121,476	$121,476
Total	$0	$0	$128,608	$128,608
FTE				0.0
(9) Board of Addiction and Prevention Professionals - Informational				
Personal Services	$0	$0	$10,967	$10,967
Operating Expenses	$0	$0	$176,726	$176,726
Total	$0	$0	$187,693	$187,693
FTE				0.0
(10) DEPARTMENT TOTAL, DEPARTMENT OF SOCIAL SERVICES				
Personal Services	$80,599,917	$53,183,848	$2,754,153	$136,537,918
Operating Expenses	$566,675,748	$1,154,464,769	$8,219,732	$1,729,360,249
Total	$647,275,665	$1,207,648,617	$10,973,885	$1,865,898,167
FTE				1,569.5

SECTION 12. DEPARTMENT OF HEALTH

(1) Administration, Secretary of Health				
Personal Services	$1,635,602	$2,637,475	$312,885	$4,585,962
Operating Expenses	$1,911,620	$15,584,185	$514,178	$18,009,983
Total	$3,547,222	$18,221,660	$827,063	$22,595,945
FTE				42.5
(2) Licensure and Accreditation				
Personal Services	$2,299,536	$3,503,523	$1,573,603	$7,376,662
Operating Expenses	$1,465,014	$1,230,232	$2,779,546	$5,474,792
Total	$3,764,550	$4,733,755	$4,353,149	$12,851,454
FTE				71.5
(3) Family and Community Health				
Personal Services	$3,208,437	$14,040,539	$1,632,695	$18,881,671
Operating Expenses	$3,230,831	$39,044,837	$5,371,505	$47,647,173
Total	$6,439,268	$53,085,376	$7,004,200	$66,528,844
FTE				197.5
(4) Laboratory Services				
Personal Services	$0	$1,271,978	$2,590,128	$3,862,106
Operating Expenses	$0	$12,787,696	$2,192,983	$14,980,679
Total	$0	$14,059,674	$4,783,111	$18,842,785
FTE				33.0
(5) Tobacco Prevention				
Personal Services	$0	$318,517	$0	$318,517
Operating Expenses	$0	$1,320,315	$4,500,272	$5,820,587
Total	$0	$1,638,832	$4,500,272	$6,139,104
FTE				3.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(6) Epidemiology, Surveillance & Informatics				
Personal Services	$223,073	$920,110	$0	$1,143,183
Operating Expenses	$187,480	$2,991,260	$0	$3,178,740
Total	$410,553	$3,911,370	$0	$4,321,923
FTE				10.0
(7) Board of Chiropractic Examiners - Informational				
Personal Services	$0	$0	$106,505	$106,505
Operating Expenses	$0	$0	$45,761	$45,761
Total	$0	$0	$152,266	$152,266
FTE				1.0
(8) Board of Dentistry - Informational				
Personal Services	$0	$0	$12,254	$12,254
Operating Expenses	$0	$0	$491,015	$491,015
Total	$0	$0	$503,269	$503,269
FTE				0.0
(9) Board of Hearing Aid Dispensers and Audiologists - Informational				
Personal Services	$0	$0	$2,053	$2,053
Operating Expenses	$0	$0	$43,374	$43,374
Total	$0	$0	$45,427	$45,427
FTE				0.0
(10) Board of Funeral Service - Informational				
Personal Services	$0	$0	$4,639	$4,639
Operating Expenses	$0	$0	$106,311	$106,311
Total	$0	$0	$110,950	$110,950
FTE				0.0
(11) Board of Medical and Osteopathic Examiners - Informational				
Personal Services	$0	$0	$695,652	$695,652
Operating Expenses	$0	$0	$589,311	$589,311
Total	$0	$0	$1,284,963	$1,284,963
FTE				8.0
(12) Board of Nursing - Informational				
Personal Services	$0	$0	$1,093,222	$1,093,222
Operating Expenses	$0	$0	$866,658	$866,658
Total	$0	$0	$1,959,880	$1,959,880
FTE				9.0
(13) Board of Nursing Home Administrators - Informational				
Personal Services	$0	$0	$3,971	$3,971
Operating Expenses	$0	$0	$66,773	$66,773
Total	$0	$0	$70,744	$70,744

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
FTE				0.0
(14) Board of Optometry - Informational				
Personal Services	$0	$0	$1,890	$1,890
Operating Expenses	$0	$0	$74,431	$74,431
Total	$0	$0	$76,321	$76,321
FTE				0.0
(15) Board of Pharmacy - Informational				
Personal Services	$0	$92,036	$920,859	$1,012,895
Operating Expenses	$0	$400,000	$666,665	$1,066,665
Total	$0	$492,036	$1,587,524	$2,079,560
FTE				6.4
(16) Board of Podiatry Examiners - Informational				
Personal Services	$0	$0	$506	$506
Operating Expenses	$0	$0	$27,419	$27,419
Total	$0	$0	$27,925	$27,925
FTE				0.0
(17) Board of Massage Therapy - Informational				
Personal Services	$0	$0	$54,156	$54,156
Operating Expenses	$0	$0	$68,383	$68,383
Total	$0	$0	$122,539	$122,539
FTE				0.6
(18) Board of Speech Language Pathology - Informational				
Personal Services	$0	$0	$1,695	$1,695
Operating Expenses	$0	$0	$72,329	$72,329
Total	$0	$0	$74,024	$74,024
FTE				0.0
(19) Board of Certified Professional Midwives - Informational				
Personal Services	$0	$0	$1,312	$1,312
Operating Expenses	$0	$0	$19,598	$19,598
Total	$0	$0	$20,910	$20,910
FTE				0.0
(20) Board of Physical Therapy - Informational				
Operating Expenses	$0	$0	$150,000	$150,000
Total	$0	$0	$150,000	$150,000
FTE				0.0
(21) DEPARTMENT TOTAL, DEPARTMENT OF HEALTH				
Personal Services	$7,366,648	$22,784,178	$9,008,025	$39,158,851
Operating Expenses	$6,794,945	$73,358,525	$18,646,512	$98,799,982
Total	$14,161,593	$96,142,703	$27,654,537	$137,958,833

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
FTE				382.5

SECTION 13. DEPARTMENT OF LABOR AND REGULATION

(1) Administration, Secretary of Labor				
Personal Services	$202,250	$3,845,575	$426,172	$4,473,997
Operating Expenses	$1,345,360	$8,771,508	$2,077,572	$12,194,440
Total	$1,547,610	$12,617,083	$2,503,744	$16,668,437
FTE				52.7
(2) Reemployment Assistance				
Personal Services	$0	$5,794,154	$0	$5,794,154
Operating Expenses	$0	$2,792,486	$0	$2,792,486
Total	$0	$8,586,640	$0	$8,586,640
FTE				76.0
(3) Job Service				
Personal Services	$745,484	$9,645,226	$865,915	$11,256,625
Operating Expenses	$390,244	$2,294,293	$70,020	$2,754,557
Total	$1,135,728	$11,939,519	$935,935	$14,011,182
FTE				133.5
(4) State Labor Law Administration				
Personal Services	$821,803	$312,300	$346,296	$1,480,399
Operating Expenses	$113,866	$66,583	$257,882	$438,331
Total	$935,669	$378,883	$604,178	$1,918,730
FTE				15.3
(5) Board of Accountancy - Informational				
Personal Services	$0	$0	$210,540	$210,540
Operating Expenses	$0	$0	$179,462	$179,462
Total	$0	$0	$390,002	$390,002
FTE				2.7
(6) Board of Barber Examiners - Informational				
Personal Services	$0	$0	$18,617	$18,617
Operating Expenses	$0	$0	$9,881	$9,881
Total	$0	$0	$28,498	$28,498
FTE				0.2
(7) Cosmetology Commission - Informational				
Personal Services	$0	$0	$325,131	$325,131
Operating Expenses	$0	$0	$131,341	$131,341
Total	$0	$0	$456,472	$456,472
FTE				4.5
(8) Plumbing Commission - Informational				
Personal Services	$0	$0	$696,088	$696,088
Operating Expenses	$0	$0	$344,705	$344,705

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$0	$0	$1,040,793	$1,040,793
FTE				8.3
(9) Board of Technical Professions - Informational				
Personal Services	$0	$0	$243,526	$243,526
Operating Expenses	$0	$0	$339,384	$339,384
Total	$0	$0	$582,910	$582,910
FTE				3.3
(10) Electrical Commission - Informational				
Personal Services	$0	$0	$2,005,278	$2,005,278
Operating Expenses	$0	$0	$695,729	$695,729
Total	$0	$0	$2,701,007	$2,701,007
FTE				23.3
(11) Real Estate Commission - Informational				
Personal Services	$0	$0	$442,077	$442,077
Operating Expenses	$0	$0	$240,567	$240,567
Total	$0	$0	$682,644	$682,644
FTE				4.6
(12) Abstracters Board of Examiners - Informational				
Personal Services	$0	$0	$8,928	$8,928
Operating Expenses	$0	$0	$48,555	$48,555
Total	$0	$0	$57,483	$57,483
FTE				0.0
(13) South Dakota Athletic Commission - Informational				
Personal Services	$0	$0	$13,102	$13,102
Operating Expenses	$0	$0	$48,025	$48,025
Total	$0	$0	$61,127	$61,127
FTE				0.0
(14) Banking				
Personal Services	$0	$0	$4,716,690	$4,716,690
Operating Expenses	$0	$0	$1,223,704	$1,223,704
Total	$0	$0	$5,940,394	$5,940,394
FTE				41.5
(15) Trust Captive Insurance Company - Informational				
Personal Services	$0	$0	$5,411	$5,411
Operating Expenses	$0	$0	$201,923	$201,923
Total	$0	$0	$207,334	$207,334
FTE				0.0
(16) Insurance				
Personal Services	$0	$25,433	$3,796,021	$3,821,454

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$0	$20,000	$901,698	$921,698
Total	$0	$45,433	$4,697,719	$4,743,152
FTE				40.7
(17) DEPARTMENT TOTAL, DEPARTMENT OF LABOR AND REGULATION				
Personal Services	$1,769,537	$19,622,688	$14,119,792	$35,512,017
Operating Expenses	$1,849,470	$13,944,870	$6,770,448	$22,564,788
Total	$3,619,007	$33,567,558	$20,890,240	$58,076,805
FTE				406.6

SECTION 14. DEPARTMENT OF TRANSPORTATION

(1) General Operations				
Personal Services	$666,059	$14,545,488	$85,231,071	$100,442,618
Operating Expenses	$25,869	$41,686,922	$113,004,552	$154,717,343
Total	$691,928	$56,232,410	$198,235,623	$255,159,961
FTE				1,014.3
(2) Construction Contracts - Informational				
Operating Expenses	$0	$795,068,873	$194,544,285	$989,613,158
Total	$0	$795,068,873	$194,544,285	$989,613,158
FTE				0.0
(3) DEPARTMENT TOTAL, DEPARTMENT OF TRANSPORTATION				
Personal Services	$666,059	$14,545,488	$85,231,071	$100,442,618
Operating Expenses	$25,869	$836,755,795	$307,548,837	$1,144,330,501
Total	$691,928	$851,301,283	$392,779,908	$1,244,773,119
FTE				1,014.3

SECTION 15. DEPARTMENT OF EDUCATION

(1) General Administration				
Personal Services	$2,556,011	$1,901,408	$296,732	$4,754,151
Operating Expenses	$1,525,079	$71,694,116	$114,184	$73,333,379
Total	$4,081,090	$73,595,524	$410,916	$78,087,530
FTE				49.5
(2) Workforce Education Fund				
Operating Expenses	$0	$0	$1,125,000	$1,125,000
Total	$0	$0	$1,125,000	$1,125,000
FTE				0.0
(3) State Aid to General Education				
Operating Expenses	$605,203,324	$0	$0	$605,203,324
Total	$605,203,324	$0	$0	$605,203,324
FTE				0.0
(4) State Aid to Special Education				
Operating Expenses	$95,484,423	$0	$0	$95,484,423

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$95,484,423	$0	$0	$95,484,423
FTE				0.0
(5) Sparsity Payments				
Operating Expenses	$2,062,387	$0	$0	$2,062,387
Total	$2,062,387	$0	$0	$2,062,387
FTE				0.0
(6) National Board Certified Teachers and Counselors				
Operating Expenses	$87,625	$0	$0	$87,625
Total	$87,625	$0	$0	$87,625
FTE				0.0
(7) Technology in Schools				
Operating Expenses	$12,797,296	$0	$2,094,957	$14,892,253
Total	$12,797,296	$0	$2,094,957	$14,892,253
FTE				0.0
(8) Technical Colleges				
Personal Services	$346,963	$0	$0	$346,963
Operating Expenses	$42,150,637	$0	$185,696	$42,336,333
Total	$42,497,600	$0	$185,696	$42,683,296
FTE				3.0
(9) Education Resources				
Personal Services	$2,460,284	$4,840,178	$376,842	$7,677,304
Operating Expenses	$9,008,357	$197,937,286	$737,950	$207,683,593
Total	$11,468,641	$202,777,464	$1,114,792	$215,360,897
FTE				83.0
(10) History				
Personal Services	$1,917,140	$546,213	$1,110,953	$3,574,306
Operating Expenses	$1,839,345	$815,828	$911,559	$3,566,732
Total	$3,756,485	$1,362,041	$2,022,512	$7,141,038
FTE				40.0
(11) Library Services				
Personal Services	$1,410,012	$481,410	$0	$1,891,422
Operating Expenses	$901,504	$899,522	$27,900	$1,828,926
Total	$2,311,516	$1,380,932	$27,900	$3,720,348
FTE				21.5
(12) DEPARTMENT TOTAL, DEPARTMENT OF EDUCATION				
Personal Services	$8,690,410	$7,769,209	$1,784,527	$18,244,146
Operating Expenses	$771,059,977	$271,346,752	$5,197,246	$1,047,603,975
Total	$779,750,387	$279,115,961	$6,981,773	$1,065,848,121

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
FTE				197.0
SECTION 16. DEPARTMENT OF PUBLIC SAFETY				
(1) Administration, Secretary of Public Safety				
Personal Services	$500,285	$161,247	$8,094,884	$8,756,416
Operating Expenses	$803,294	$770,077	$3,921,891	$5,495,262
Total	$1,303,579	$931,324	$12,016,775	$14,251,678
FTE				112.0
(2) Highway Patrol				
Personal Services	$810,635	$1,805,845	$25,178,593	$27,795,073
Operating Expenses	$1,013,930	$2,555,287	$9,493,518	$13,062,735
Total	$1,824,565	$4,361,132	$34,672,111	$40,857,808
FTE				277.0
(3) Emergency Services				
Personal Services	$2,764,865	$2,577,260	$487,137	$5,829,262
Operating Expenses	$981,164	$7,012,118	$662,160	$8,655,442
Total	$3,746,029	$9,589,378	$1,149,297	$14,484,704
FTE				74.8
(4) Criminal Justice Services				
Personal Services	$287,621	$1,795,455	$414,523	$2,497,599
Operating Expenses	$436,597	$20,622,126	$2,255,017	$23,313,740
Total	$724,218	$22,417,581	$2,669,540	$25,811,339
FTE				22.0
(5) 911 Coordination Board - Informational				
Personal Services	$0	$0	$236,770	$236,770
Operating Expenses	$0	$250,000	$4,397,740	$4,647,740
Total	$0	$250,000	$4,634,510	$4,884,510
FTE				2.0
(6) One-Call Board - Informational				
Personal Services	$0	$0	$271,576	$271,576
Operating Expenses	$0	$0	$1,116,327	$1,116,327
Total	$0	$0	$1,387,903	$1,387,903
FTE				2.0
(7) DEPARTMENT TOTAL, DEPARTMENT OF PUBLIC SAFETY				
Personal Services	$4,363,406	$6,339,807	$34,683,483	$45,386,696
Operating Expenses	$3,234,985	$31,209,608	$21,846,653	$56,291,246
Total	$7,598,391	$37,549,415	$56,530,136	$101,677,942
FTE				489.8
SECTION 17. BOARD OF REGENTS				
(1) Board of Regents Central Office				
Personal Services	$5,739,682	$620,122	$2,757,044	$9,116,848

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$29,711,209	$5,400,000	$43,563,070	$78,674,279
Total	$35,450,891	$6,020,122	$46,320,114	$87,791,127
FTE				66.5
(2) Research Pool				
Operating Expenses	$4,672,951	$0	$0	$4,672,951
Total	$4,672,951	$0	$0	$4,672,951
FTE				0.0
(3) South Dakota Scholarships				
Operating Expenses	$6,555,306	$0	$0	$6,555,306
Total	$6,555,306	$0	$0	$6,555,306
FTE				0.0
(4) University of South Dakota				
Personal Services	$47,324,362	$8,562,485	$58,295,575	$114,182,422
Operating Expenses	$3,758,424	$4,480,360	$42,292,424	$50,531,208
Total	$51,082,786	$13,042,845	$100,587,999	$164,713,630
FTE				1,074.9
(5) University of South Dakota Law School				
Personal Services	$2,369,274	$84,800	$2,679,984	$5,134,058
Operating Expenses	$206,263	$2,483	$1,078,561	$1,287,307
Total	$2,575,537	$87,283	$3,758,545	$6,421,365
FTE				34.3
(6) University of South Dakota School of Medicine				
Personal Services	$26,241,770	$7,215,803	$15,932,334	$49,389,907
Operating Expenses	$4,154,892	$5,789,271	$10,095,282	$20,039,445
Total	$30,396,662	$13,005,074	$26,027,616	$69,429,352
FTE				355.0
(7) South Dakota State University				
Personal Services	$62,905,846	$9,887,449	$97,525,063	$170,318,358
Operating Expenses	$6,622,802	$14,601,840	$73,754,504	$94,979,146
Total	$69,528,648	$24,489,289	$171,279,567	$265,297,504
FTE				1,561.7
(8) SDSU Extension				
Personal Services	$10,189,511	$3,946,635	$1,361,629	$15,497,775
Operating Expenses	$305,374	$3,303,110	$1,476,979	$5,085,463
Total	$10,494,885	$7,249,745	$2,838,608	$20,583,238
FTE				180.4
(9) Agricultural Experiment Station				
Personal Services	$14,507,408	$6,771,474	$6,843,652	$28,122,534
Operating Expenses	$628,281	$15,371,050	$12,338,240	$28,337,571

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$15,135,689	$22,142,524	$19,181,892	$56,460,105
FTE				244.3
(10) SD School of Mines and Technology				
Personal Services	$23,270,802	$6,658,028	$26,562,432	$56,491,262
Operating Expenses	$1,357,619	$6,725,076	$19,670,184	$27,752,879
Total	$24,628,421	$13,383,104	$46,232,616	$84,244,141
FTE				448.4
(11) Northern State University				
Personal Services	$15,931,042	$1,315,504	$13,771,504	$31,018,050
Operating Expenses	$1,014,636	$974,040	$11,351,231	$13,339,907
Total	$16,945,678	$2,289,544	$25,122,735	$44,357,957
FTE				321.1
(12) NSU Center for Statewide High School E-Learning				
Personal Services	$3,639,404	$0	$0	$3,639,404
Operating Expenses	$375,645	$0	$0	$375,645
Total	$4,015,049	$0	$0	$4,015,049
FTE				39.9
(13) Black Hills State University				
Personal Services	$15,249,790	$2,403,141	$15,473,360	$33,126,291
Operating Expenses	$816,052	$1,032,361	$12,577,921	$14,426,334
Total	$16,065,842	$3,435,502	$28,051,281	$47,552,625
FTE				336.5
(14) Dakota State University				
Personal Services	$14,372,428	$1,954,889	$24,204,413	$40,531,730
Operating Expenses	$842,520	$3,153,793	$19,496,224	$23,492,537
Total	$15,214,948	$5,108,682	$43,700,637	$64,024,267
FTE				344.8
(15) SD Services for the Deaf				
Personal Services	$2,278,611	$0	$3,763	$2,282,374
Operating Expenses	$720,722	$0	$464,711	$1,185,433
Total	$2,999,333	$0	$468,474	$3,467,807
FTE				26.0
(16) SD School for the Blind and Visually Impaired				
Personal Services	$3,187,458	$62,626	$237,065	$3,487,149
Operating Expenses	$630,383	$27,835	$162,962	$821,180
Total	$3,817,841	$90,461	$400,027	$4,308,329
FTE				45.6
(17) DEPARTMENT TOTAL, BOARD OF REGENTS				
Personal Services	$247,207,388	$49,482,956	$265,647,818	$562,338,162

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Operating Expenses	$62,373,079	$60,861,219	$248,322,293	$371,556,591
Total	$309,580,467	$110,344,175	$513,970,111	$933,894,753
FTE				5,079.4

SECTION 18. DEPARTMENT OF THE MILITARY

(1) Adjutant General				
Personal Services	$582,213	$0	$0	$582,213
Operating Expenses	$3,243,116	$10,306	$29,254	$3,282,676
Total	$3,825,329	$10,306	$29,254	$3,864,889
FTE				5.3
(2) Army Guard				
Personal Services	$545,365	$4,110,563	$0	$4,655,928
Operating Expenses	$3,145,240	$16,283,140	$0	$19,428,380
Total	$3,690,605	$20,393,703	$0	$24,084,308
FTE				63.1
(3) Air Guard				
Personal Services	$294,983	$3,836,305	$0	$4,131,288
Operating Expenses	$322,625	$3,341,236	$0	$3,663,861
Total	$617,608	$7,177,541	$0	$7,795,149
FTE				48.0
(4) DEPARTMENT TOTAL, DEPARTMENT OF THE MILITARY				
Personal Services	$1,422,561	$7,946,868	$0	$9,369,429
Operating Expenses	$6,710,981	$19,634,682	$29,254	$26,374,917
Total	$8,133,542	$27,581,550	$29,254	$35,744,346
FTE				116.4

SECTION 19. DEPARTMENT OF VETERANS' AFFAIRS

(1) Veterans' Benefits and Services				
Personal Services	$1,656,299	$218,523	$0	$1,874,822
Operating Expenses	$635,446	$53,354	$61,074	$749,874
Total	$2,291,745	$271,877	$61,074	$2,624,696
FTE				22.0
(2) State Veterans' Home				
Personal Services	$2,555,791	$3,440,609	$2,849,820	$8,846,220
Operating Expenses	$0	$0	$3,685,331	$3,685,331
Total	$2,555,791	$3,440,609	$6,535,151	$12,531,551
FTE				118.2
(3) State Veterans' Cemetery				
Personal Services	$92,470	$0	$229,527	$321,997
Operating Expenses	$74,390	$0	$0	$74,390
Total	$166,860	$0	$229,527	$396,387
FTE				5.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(4) DEPARTMENT TOTAL, DEPARTMENT OF VETERANS' AFFAIRS				
Personal Services	$4,304,560	$3,659,132	$3,079,347	$11,043,039
Operating Expenses	$709,836	$53,354	$3,746,405	$4,509,595
Total	$5,014,396	$3,712,486	$6,825,752	$15,552,634
FTE				145.2

SECTION 20. DEPARTMENT OF CORRECTIONS

(1) Administration				
Personal Services	$3,344,447	$282,862	$0	$3,627,309
Operating Expenses	$2,398,948	$869,121	$0	$3,268,069
Total	$5,743,395	$1,151,983	$0	$6,895,378
FTE				31.0
(2) Mike Durfee State Prison				
Personal Services	$18,899,478	$185,827	$0	$19,085,305
Operating Expenses	$8,977,599	$28,845	$0	$9,006,444
Total	$27,877,077	$214,672	$0	$28,091,749
FTE				219.0
(3) State Penitentiary				
Personal Services	$28,403,245	$187,995	$0	$28,591,240
Operating Expenses	$9,297,658	$47,830	$0	$9,345,488
Total	$37,700,903	$235,825	$0	$37,936,728
FTE				332.0
(4) Women's Prison				
Personal Services	$6,731,497	$322,838	$0	$7,054,335
Operating Expenses	$2,887,801	$12,522	$0	$2,900,323
Total	$9,619,298	$335,360	$0	$9,954,658
FTE				79.0
(5) Pheasantland Industries				
Personal Services	$0	$0	$1,487,091	$1,487,091
Operating Expenses	$0	$0	$3,582,733	$3,582,733
Total	$0	$0	$5,069,824	$5,069,824
FTE				18.0
(6) Inmate Services				
Personal Services	$19,427,722	$76,897	$0	$19,504,619
Operating Expenses	$23,289,066	$51,500	$0	$23,340,566
Total	$42,716,788	$128,397	$0	$42,845,185
FTE				197.9
(7) Parole Services				
Personal Services	$6,321,406	$0	$0	$6,321,406
Operating Expenses	$2,405,428	$0	$0	$2,405,428

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$8,726,834	$0	$0	$8,726,834
FTE				75.0
(8) Juvenile Community Corrections				
Personal Services	$2,190,011	$0	$0	$2,190,011
Operating Expenses	$11,774,476	$2,463,085	$0	$14,237,561
Total	$13,964,487	$2,463,085	$0	$16,427,572
FTE				22.7
(9) DEPARTMENT TOTAL, DEPARTMENT OF CORRECTIONS				
Personal Services	$85,317,806	$1,056,419	$1,487,091	$87,861,316
Operating Expenses	$61,030,976	$3,472,903	$3,582,733	$68,086,612
Total	$146,348,782	$4,529,322	$5,069,824	$155,947,928
FTE				974.6

SECTION 21. DEPARTMENT OF HUMAN SERVICES

(1) Administration, Secretary of Human Services				
Personal Services	$1,248,529	$1,258,633	$0	$2,507,162
Operating Expenses	$386,537	$191,990	$3,096	$581,623
Total	$1,635,066	$1,450,623	$3,096	$3,088,785
FTE				27.0
(2) Developmental Disabilities				
Personal Services	$1,150,080	$1,242,549	$0	$2,392,629
Operating Expenses	$118,619,649	$175,389,662	$8,522,277	$302,531,588
Total	$119,769,729	$176,632,211	$8,522,277	$304,924,217
FTE				26.5
(3) South Dakota Developmental Center - Redfield				
Personal Services	$8,729,345	$12,327,974	$0	$21,057,319
Operating Expenses	$2,334,014	$3,126,405	$857,224	$6,317,643
Total	$11,063,359	$15,454,379	$857,224	$27,374,962
FTE				272.1
(4) Long Term Services and Supports				
Personal Services	$3,383,440	$5,891,470	$31,616	$9,306,526
Operating Expenses	$145,618,748	$199,190,175	$816,035	$345,624,958
Total	$149,002,188	$205,081,645	$847,651	$354,931,484
FTE				101.0
(5) Rehabilitation Services				
Personal Services	$1,179,886	$7,503,630	$0	$8,683,516
Operating Expenses	$5,188,127	$15,010,392	$2,441,118	$22,639,637
Total	$6,368,013	$22,514,022	$2,441,118	$31,323,153
FTE				102.1
(6) Telecommunication Devices for the Deaf				
Operating Expenses	$0	$0	$1,301,680	$1,301,680

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$0	$0	$1,301,680	$1,301,680
FTE				0.0
(7) Service to the Blind and Visually Impaired				
Personal Services	$677,394	$1,657,891	$235,643	$2,570,928
Operating Expenses	$476,709	$1,432,496	$306,020	$2,215,225
Total	$1,154,103	$3,090,387	$541,663	$4,786,153
FTE				29.2
(8) DEPARTMENT TOTAL, DEPARTMENT OF HUMAN SERVICES				
Personal Services	$16,368,674	$29,882,147	$267,259	$46,518,080
Operating Expenses	$272,623,784	$394,341,120	$14,247,450	$681,212,354
Total	$288,992,458	$424,223,267	$14,514,709	$727,730,434
FTE				557.9

SECTION 22. SOUTH DAKOTA RETIREMENT SYSTEM

(1) South Dakota Retirement System				
Personal Services	$0	$0	$3,729,034	$3,729,034
Operating Expenses	$0	$0	$2,313,163	$2,313,163
Total	$0	$0	$6,042,197	$6,042,197
FTE				35.0
(2) DEPARTMENT TOTAL, SOUTH DAKOTA RETIREMENT SYSTEM				
Personal Services	$0	$0	$3,729,034	$3,729,034
Operating Expenses	$0	$0	$2,313,163	$2,313,163
Total	$0	$0	$6,042,197	$6,042,197
FTE				35.0

SECTION 23. PUBLIC UTILITIES COMMISSION

(1) Public Utilities Commission (PUC)				
Personal Services	$658,589	$247,490	$3,009,034	$3,915,113
Operating Expenses	$63,619	$67,289	$812,513	$943,421
Total	$722,208	$314,779	$3,821,547	$4,858,534
FTE				31.2
(2) DEPARTMENT TOTAL, PUBLIC UTILITIES COMMISSION				
Personal Services	$658,589	$247,490	$3,009,034	$3,915,113
Operating Expenses	$63,619	$67,289	$812,513	$943,421
Total	$722,208	$314,779	$3,821,547	$4,858,534
FTE				31.2

SECTION 24. UNIFIED JUDICIAL SYSTEM

(1) State Bar Association - Informational				
Personal Services	$0	$0	$288,055	$288,055
Operating Expenses	$0	$0	$339,219	$339,219
Total	$0	$0	$627,274	$627,274
FTE				3.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(2) Unified Judicial System				
Personal Services	$55,327,647	$227,844	$3,727,538	$59,283,029
Operating Expenses	$6,690,994	$269,646	$9,420,654	$16,381,294
Total	$62,018,641	$497,490	$13,148,192	$75,664,323
FTE				607.7
(3) Equal Access to Our Courts				
Operating Expenses	$300,000	$0	$200,000	$500,000
Total	$300,000	$0	$200,000	$500,000
FTE				0.0
(4) Indigent Legal Services				
Personal Services	$797,831	$0	$0	$797,831
Operating Expenses	$615,000	$0	$0	$615,000
Total	$1,412,831	$0	$0	$1,412,831
FTE				7.0
(5) DEPARTMENT TOTAL, UNIFIED JUDICIAL SYSTEM				
Personal Services	$56,125,478	$227,844	$4,015,593	$60,368,915
Operating Expenses	$7,605,994	$269,646	$9,959,873	$17,835,513
Total	$63,731,472	$497,490	$13,975,466	$78,204,428
FTE				617.7

SECTION 25. LEGISLATIVE BRANCH

(1) Legislative Operations				
Single Line Item Appropriation	$8,887,186	$0	$0	$8,887,186
Total	$8,887,186	$0	$0	$8,887,186
FTE				37.6
(2) Legislative Priority Fund				
Single Line Item Appropriation	$0	$0	$755,066	$755,066
Total	$0	$0	$755,066	$755,066
FTE				0.0
(3) Auditor General				
Personal Services	$5,004,931	$0	$0	$5,004,931
Operating Expenses	$457,001	$0	$0	$457,001
Total	$5,461,932	$0	$0	$5,461,932
FTE				42.0
(4) DEPARTMENT TOTAL, LEGISLATIVE BRANCH				
Personal Services	$5,004,931	$0	$0	$5,004,931
Operating Expenses	$457,001	$0	$0	$457,001
Single Line Item Appropriation	$8,887,186	$0	$755,066	$9,642,252

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
Total	$14,349,118	$0	$755,066	$15,104,184
FTE				79.6

SECTION 26. OFFICE OF THE ATTORNEY GENERAL

(1) Legal Services Program				
Personal Services	$6,192,595	$451,499	$2,354,107	$8,998,201
Operating Expenses	$968,417	$530,471	$1,175,182	$2,674,070
Total	$7,161,012	$981,970	$3,529,289	$11,672,271
FTE				75.0
(2) Criminal Investigation				
Personal Services	$8,245,027	$1,308,161	$3,902,243	$13,455,431
Operating Expenses	$3,465,557	$3,380,913	$3,381,837	$10,228,307
Total	$11,710,584	$4,689,074	$7,284,080	$23,683,738
FTE				121.5
(3) Law Enforcement Training				
Personal Services	$0	$0	$1,178,342	$1,178,342
Operating Expenses	$138,409	$0	$1,760,013	$1,898,422
Total	$138,409	$0	$2,938,355	$3,076,764
FTE				14.5
(4) 911 Training				
Personal Services	$0	$0	$164,888	$164,888
Operating Expenses	$0	$0	$102,816	$102,816
Total	$0	$0	$267,704	$267,704
FTE				2.0
(5) Insurance Fraud Unit - Informational				
Personal Services	$0	$0	$248,331	$248,331
Operating Expenses	$0	$0	$80,953	$80,953
Total	$0	$0	$329,284	$329,284
FTE				3.0
(6) DEPARTMENT TOTAL, OFFICE OF THE ATTORNEY GENERAL				
Personal Services	$14,437,622	$1,759,660	$7,847,911	$24,045,193
Operating Expenses	$4,572,383	$3,911,384	$6,500,801	$14,984,568
Total	$19,010,005	$5,671,044	$14,348,712	$39,029,761
FTE				216.0

SECTION 27. SCHOOL AND PUBLIC LANDS

(1) Administration of School and Public Lands				
Personal Services	$646,791	$0	$62,399	$709,190
Operating Expenses	$205,539	$0	$276,215	$481,754
Total	$852,330	$0	$338,614	$1,190,944
FTE				7.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(2) DEPARTMENT TOTAL, SCHOOL AND PUBLIC LANDS				
Personal Services	$646,791	$0	$62,399	$709,190
Operating Expenses	$205,539	$0	$276,215	$481,754
Total	$852,330	$0	$338,614	$1,190,944
FTE				7.0

SECTION 28. SECRETARY OF STATE

(1) Secretary of State				
Personal Services	$874,108	$111,221	$413,209	$1,398,538
Operating Expenses	$669,952	$1,873,000	$345,374	$2,888,326
Total	$1,544,060	$1,984,221	$758,583	$4,286,864
FTE				15.6
(2) DEPARTMENT TOTAL, SECRETARY OF STATE				
Personal Services	$874,108	$111,221	$413,209	$1,398,538
Operating Expenses	$669,952	$1,873,000	$345,374	$2,888,326
Total	$1,544,060	$1,984,221	$758,583	$4,286,864
FTE				15.6

SECTION 29. STATE TREASURER

(1) Treasury Management				
Personal Services	$508,982	$0	$0	$508,982
Operating Expenses	$180,344	$0	$0	$180,344
Total	$689,326	$0	$0	$689,326
FTE				5.1
(2) Unclaimed Property - Informational				
Operating Expenses	$0	$0	$32,025,105	$32,025,105
Total	$0	$0	$32,025,105	$32,025,105
FTE				0.0
(3) Unclaimed Property Operations				
Personal Services	$561,923	$0	$0	$561,923
Operating Expenses	$754,295	$0	$0	$754,295
Total	$1,316,218	$0	$0	$1,316,218
FTE				5.9
(4) Investment of State Funds				
Personal Services	$0	$0	$9,462,596	$9,462,596
Operating Expenses	$0	$0	$3,033,298	$3,033,298
Total	$0	$0	$12,495,894	$12,495,894
FTE				35.0
(5) Performance Based Compensation				
Personal Services	$0	$0	$16,641,845	$16,641,845
Total	$0	$0	$16,641,845	$16,641,845
FTE				0.0

	GENERAL FUNDS	FEDERAL FUNDS	OTHER FUNDS	TOTAL FUNDS
(6) DEPARTMENT TOTAL, STATE TREASURER				
Personal Services	$1,070,905	$0	$26,104,441	$27,175,346
Operating Expenses	$934,639	$0	$35,058,403	$35,993,042
Total	$2,005,544	$0	$61,162,844	$63,168,388
FTE				46.0

SECTION 30. STATE AUDITOR

(1) State Auditor				
Personal Services	$1,520,295	$0	$0	$1,520,295
Operating Expenses	$188,101	$0	$0	$188,101
Total	$1,708,396	$0	$0	$1,708,396
FTE				16.0
(2) DEPARTMENT TOTAL, STATE AUDITOR				
Personal Services	$1,520,295	$0	$0	$1,520,295
Operating Expenses	$188,101	$0	$0	$188,101
Total	$1,708,396	$0	$0	$1,708,396
FTE				16.0

SECTION 31. STATE

Personal Services	$590,629,741	$246,025,260	$623,249,643	$1,459,904,644
Operating Expenses	$1,809,974,641	$2,973,048,853	$1,052,156,063	$5,835,179,557
Single Line Item Appropriation	$8,887,186	$0	$755,066	$9,642,252
Total	$2,409,491,568	$3,219,074,113	$1,676,160,772	$7,304,726,453
FTE				14,071.7

Section 32. The state treasurer shall transfer to the state general fund money from the following funds for the purposes herein indicated:

From the state highway fund:

Radio Communications Operations $4,102,779

Governor's Office Operations $117,489

From the game, fish and parks fund:

Radio Communications Operations $67,855

From the game, fish and parks administrative revolving fund:

Governor's Office Operations $19,782

From the motor vehicle fund:

Radio Communications Operations $626,568

Section 33. The state treasurer shall transfer to the state general fund $2,000,000 from the veterans home operating fund created by § 33A-4-24.

Section 34. The state treasurer shall transfer to the state general fund money from the dakota cement trust fund, the amount identified by notice of the state investment officer pursuant to S.D. Const., Art. XIII, § 21, for the Department of Education - state aid to education.

Section 35. The state treasurer shall transfer to the state general fund money from the health care trust fund, the amount identified by notice of the state investment officer pursuant to § 4-5-29.1, for the Department of Social Services - medical services.

Section 36. The state treasurer shall transfer to the state general fund money from the education enhancement trust fund, the amount identified by notice of the state investment officer pursuant to § 4-5-29.2, for the Department of Education - state aid to education and the Board of Regents - postsecondary scholarship grant programs.

Section 37. The state treasurer shall transfer to the state animal disease research and diagnostic laboratory bond redemption and operations fund $3,350,000 from the state general fund.

Section 38. The state treasurer shall transfer to the precision agriculture fund $900,000 from the state general fund.

Section 39. All members of state boards, councils, commissions, and advisory bodies listed in this section, or created by law during the Ninety-ninth and One-hundredth Legislative Sessions, are entitled to reimbursement for allowable expenses as approved by the Board of Finance under the provisions of chapter 3-9. The salary or per diem compensation for members of state boards, councils, commissions, and advisory bodies for their work in actual performance of their duties or responsibilities is as follows:

PER DIEM PAYABLE

FISCAL YEARS 2025 & 2026

BOARDS, COMMITTEES, COUNCILS, AND COMMISSIONS

EXECUTIVE MANAGEMENT	
Capitol Complex Restoration and Beautification Commission	$ 0
Civil Service Commission	$166
Economic Advisors, Council of	$ 0
Economic Development, Board of	$166
Economic Development Finance Authority	$ 0
Educational Enhancement Funding Corporation	$ 0
Education Telecommunications, Board of Directors for	$166
Housing Development Authority	$166
Internal Control, Board of	$ 0
Records Retention, State Board of	$ 0
Research and Commercialization Council	$ 0
Science and Technology Authority, Board of	$166
SD Building Authority	$166
SD Ellsworth Authority	$ 0
SD Health and Educational Facilities Authority	$ 0
SD State Radio	$ 0
REVENUE	
Gaming, Commission on	$166
SD Lottery Commission	$166
AGRICULTURE AND NATURAL RESOURCES	
American Dairy Association of SD	$166
Animal Industry Board	$166
Brand Board	$166
Corn Utilization Council	$166
Oilseeds Council	$166
South Dakota-Ireland Trade Commission	$166
SD Pulse Crops Council	$166
Soybean Research and Promotion Council	$166

State Conservation Commission	$166
State Fair Commission	$166
Veterinary Medical Examiners, Board of	$166
Weed and Pest Control Commission	$166
Wheat Commission	$166
Nutrient Research and Education Council	$ 0
Seed Certification Board	$ 0
Emergency Response Commission	$ 0
Minerals and Environment, Board of	$166
Operator Certification Board	$ 0
Petroleum Release Compensation Board	$166
Small Business Clean Air Compliance Advisory Panel	$ 0
Water and Natural Resources, Board of	$166
Water Management Board	$166
TOURISM	
Arts Council	$166
Tourism, Board of	$166
GAME, FISH, AND PARKS	
Boundary Waters Commission - SD - MN	$ 0
Game, Fish, and Parks Commission	$166
Governor's Commission on Ft. Sisseton	$ 0
SD Recreation Trail Advisory Board	$ 0
SD Snowmobile Advisory Council	$ 0
TRIBAL RELATIONS	
Native American Advisory Council	$ 0
SD Geographic Names, Board of	$ 0
SOCIAL SERVICES	
Addiction and Prevention Professionals, Board of	$166
Behavioral Health Advisory Council	$ 0
Child Support Commission	$ 0
Counselors and Marriage and Family Therapists Examiners, Board of	$166
Indian Child Welfare Advisory Council	$ 0
Medicaid Pharmaceutical and Therapeutics Committee	$166
Medical Advisory Committee	$ 0
Psychologists Examiners, Board of	$166
Social Services, Board of	$ 0
Social Workers Examiners, Board of	$166
HEALTH	
Healthcare Associated Infection/Antimicrobial Stewardship Advisory Committee	$ 0
Certified Professional Midwives, Board of	$166
Chiropractic Examiners, Board of	$166
Dentistry, Board of	$166
Funeral Services, State Board of	$166
Health Link Advisory Committee	$ 0
Hearing Aid Dispensers, Board of	$166
HIV Prevention Planning Workgroup	$ 0
Massage Therapy, Board of	$166
Medical and Osteopathic Examiners, Board of	$166
Nursing, Board of	$166
Nursing Home Administrators, Board of	$166
Optometry Examiners, Board of	$166

Pharmacy, Board of	$166
Physical Therapy, Board of	$166
Preventive Health and Human Services Block Grant Advisory Committee	$ 0
Podiatry Examiners, Board of	$166
Prescription Opioid Abuse Advisory Committee	$ 0
Ryan White Care Council	$ 0
Speech Language Pathology, Board of	$166
Tobacco Prevention and Control State Advisory Committee	$ 0
LABOR AND REGULATION	
Abstractors Board of Examiners	$166
Accountancy, SD Board of	$166
Appraiser Certification Program Advisory Council	$166
Banking Commission, State	$166
Barber Examiners, Board of	$166
Cosmetology Commission	$166
Electrical Commission, State	$166
Governor's Task Force on Trust Administration Review and Reform	$ 0
Human Rights, Commission on	$166
Plumbing Commission	$166
Public Deposit Protection Commission	$ 0
Real Estate Commission	$166
Reemployment Assistance Advisory Council	$166
SD Athletic Commission	$166
SD Workforce Development Council	$166
State Workers' Compensation Advisory Council	$ 0
Technical Professions, Board of	$166
TRANSPORTATION	
Aeronautics Commission	$166
Railroad Board, SD	$166
Transportation Commission, State	$166
EDUCATION	
Advisory Panel for Children with Disabilities	$ 0
America 250th South Dakota Commission	$166
Education Standards, State Board of	$166
Extraordinary Cost Oversight Board	$ 0
Historical Society Trustees, Board of	$166
Practitioners, Committee of	$ 0
Professional Administrators Practices and Standards Commission	$166
Professional Practices and Standards Commission	$166
Richard Hagen-Minerva Harvey Memorial Scholarship Board	$ 0
School Finance Accountability Board	$166
SD Interagency Coordinating Council	$ 0
State Library Board	$166
Teacher Compensation Review Board	$166
Title III Coordinators Advisory Panel	$ 0
Technical Education, Board of	$166
Virtual High School Advisory	$ 0
PUBLIC SAFETY	
Crime Victims Compensation Board	$166
Fire Marshal's Advisory Board	$ 0
One Call Notification Board	$ 0
SD Homeland Security Senior Advisory Committee	$ 0
SD 9-1-1 Coordination Board	$ 0

REGENTS	
Regents, Board of	$166
CORRECTIONS	
Corrections Commission	$ 0
Council of Juvenile Services	$ 0
Interstate Adult Supervision, State Council for	$ 0
Interstate Commission for Juveniles, Council for the	$ 0
Pardons and Paroles, Board of	$200

The expense reimbursement for each member of the Board of Pardons and Paroles is equal to the daily rate set in § 24-13-5.

HUMAN SERVICES	
Aging, Advisory Council on	$166
Blind Vendors Committee	$ 0
Family Support Council	$ 0
Planning Council on Developmental Disabilities	$166
Services to the Blind and Visually Impaired, Board of	$166
State Council for Independent Living	$ 0
Vocational Rehabilitation, Board of	$166
SD RETIREMENT SYSTEM	
SD Retirement System Board of Trustees	$166
UNIFIED JUDICIAL SYSTEM	
Commission on Indigent Legal Services	$166
Court Appointed Special Advocate Commission	$ 0
Equal Access to Our Courts, Commission on	$ 0
Indigent Legal Services Task Force	$ 0
Judicial Qualifications Commission	$166
Juvenile Justice Oversight Committee	$ 0

LEGISLATIVE

The salary or per diem compensation for members of the Legislature is equal to the daily rate set by subdivision 2-4-2(2).

ATTORNEY GENERAL	
Government Accountability Board	

The salary or per diem compensation for members of the Government Accountability Board is set by § 3-24-1.

Law Enforcement Officers Standards Commission	$166
Open Meeting Commission	$166
SECRETARY OF STATE	
Elections, State Board of	$166
Finance, Board of	$ 0
Help America Vote Act Board	$ 0
STATE TREASURER	
Investment Council	$166
Public Deposit Protection Commission	$ 0

Signed March 18, 2024

SUPREME COURT RULES AND ORDERS

Chapter 237

SCR 23-16

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL 16-12B-1.1	RULE 23-16

A hearing was held on June 15, 2023, at Pierre, South Dakota, relating to the amendment of SDCL 16-12B-1.1 and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-12B-1.1 be and it is hereby amended to read in its entirety as follows:

SDCL 16-12B-1.1. Number of magistrate judges. The number of magistrate judges in the judicial circuits established by § 16-5-1.2 is fixed as follows:

(1) First Circuit: Two full-time magistrate judges;

(2) Second Circuit: ~~Four~~ Five full-time magistrate judges;

(3) Third Circuit: Two full-time magistrate judges;

(4) Fourth Circuit: Two full-time magistrate judges;

(5) Fifth Circuit: One full-time magistrate judge;

(6) Sixth Circuit: One full-time magistrate judge; and

(7) Seventh Circuit: Four full-time magistrate judges.

IT IS FURTHER ORDERED that the rule shall become effective immediately.

DATED at Pierre, South Dakota, this 15th day of June, 2023.

Chapter 238

SCR 23-17

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL 16-16-13	RULE 23-17

A hearing was held on August 31, 2023, at Pierre, South Dakota, relating to the amendment of SDCL 16-16-13 and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-16-13 be and it is hereby amended to read in its entirety as follows:

SDCL 16-16-13. Fees payable with application for admission--Disposition of fees. An applicant for an admission on examination shall pay a fee of four hundred fifty dollars. An applicant for admission without examination shall pay a fee of six hundred fifty dollars. An applicant shall also pay the National Conference of Bar Examiners the applicable fee for preparation of an initial or supplemental character report. If an applicant fails to appear for the examination, the fee paid shall ~~only~~ be applied to one of the next two scheduled combined Multistate Essay ~~Examination~~ Examinations, which ~~includes~~ include an Indian Law question and Multistate Performance Test, and/or ~~to the~~ Multistate Bar ~~Examination~~ Examinations. The applicant shall inform the Secretary in writing as to which of the next two scheduled examinations the fee should be applied. The fees thus paid to the Secretary shall be retained in a special fund and shall be paid out by the state court administrator when authorized by the Secretary for the compensation and necessary expenses of the Board of Bar Examiners.

IT IS FURTHER ORDERED that this rule become effective immediately.

DATED at Pierre, South Dakota, this 1st day of September, 2023.

Chapter 239

SCR 24-01

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF ARTICLE V OF THE STATE BAR OF SOUTH DAKOTA BYLAWS (APPENDIX SDCL CHAPTER 16-17) IN RE: STATE BAR ELECTED OFFICERS	RULE 24-01

A hearing was held on February 14, 2024, at Pierre, South Dakota, relating to the amendment to Article V of the State Bar of South Dakota Bylaws, Appendix SDCL Chapter 16-17, and the Court having considered the proposed amendment and oral presentation relating thereto, now, therefore, it is

ORDERED that Article V of the State Bar of South Dakota Bylaws are amended to read in its entirety as follows:

"ARTICLE V – STATE BAR ELECTED OFFICERS"
OF THE STATE BAR OF SOUTH DAKOTA BYLAWS

5.1. **Officers.** The State Bar elected officers are President and President Elect (individually "State Bar Officer" and collectively "State Bar Officers"). Only Active Members may be elected to either of these offices.

5.2. **President Elect Nomination.** To qualify as a President Elect candidate, the candidate must be an Active Member and complete a nominating petition containing signatures of at least fifteen Active Members. Candidates must file completed nominating petitions with the Executive Director at least 10 days before the Annual Meeting.

~~5.2.~~5.3. **Installation, Election, and Term.** The President will install the President Elect as President before the Annual meeting adjourns each year. The Active Members at the Annual Meeting will then, by majority vote, elect the next President Elect. The President will serve a one-year term. The President Elect will serve in that capacity until installed as President the following year.

~~5.3.~~5.4. **Duties.** The State Bar officers' duties are as follows:

a. **President.** The President may:
   i. preside at all State Bar and Bar Commission meetings;
   ii. execute, with the Executive Director, all State Bar contracts and instruments as authorized by the Bar Commission;
   iii. appoint Members to standing and ad hoc committees;
   iv. be an ex-officio, non-voting Member of all committees except as specified otherwise herein;
   v. perform all duties incident to the office of President and such other duties as may be assigned by the Bar Commission; and,
   vi. perform the duties of the Executive Director in the event the Executive Director is unable to perform. The President may appoint someone to serve as the Executive Director if the President is unwilling or unable to perform those duties. The President or the President's appointee will serve until the Bar Commission hired a new Executive Director or until the current Executive Director is able to return to and perform the duties of that position.

b. **President Elect.** The President Elect will perform and be vested with all the powers and duties of the President in the event the President is absent or otherwise unwilling or unable to perform. The President Elect may perform such duties as may be assigned by the President

and Bar Commission.

~~5.4.~~5.5. **Vacancy.** If the office of President becomes vacant for any reason, the President Elect will complete the remainder of the President's term. After completing the President's unfulfilled term, the President Elect will serve his or her full term as President. If the office of President Elect becomes vacant for any reason, the Bar Commission, by majority vote, will fill that vacancy. The person appointed to fulfill the President Elect's remaining term will hold office until the next President Elect is elected at the Annual Meeting of the State Bar.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 20th day of February, 2024.

Chapter 240

SCR 24-02

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL 23A-48-19	RULE 24-02

A hearing was held on February 14, 2024, at Pierre, South Dakota, relating to the amendment of SDCL 23A-48-19, and the Court having considered the proposed amendment and oral presentation relating thereto, now, therefore, it is

ORDERED that SDCL 23A-48-19 is amended to read in its entirety as follows:

SDCL 23A-48-19. Criteria for awarding earned discharge credits.

A probationer shall be awarded earned discharge credits while on supervised probation as follows:

(1) For each full calendar month of compliance with the terms of supervised probation an earned discharge credit of 30 days shall be awarded to a probationer. Each earned discharge credit shall reduce the term of supervised probation by 30 days. No earned discharge credit may be awarded for a partial month or the last two full months of supervised probation. No earned discharge credit may be awarded for any month, or portion of a month, during which the probationer is incarcerated.

(2) A probationer shall not receive an earned discharge credit for any month(s) during which a probation violation is pending before the court. If the court does not sustain the probation violation, the court may enter a written order awarding earned discharge credits to the probationer for

the months the probation violation was pending before the court. Absent such an order the probationer shall not be entitled to any earned discharge credit for such period of time.

(3) Earned discharge credits shall not be awarded to a probationer for any month(s) in which a probationer is absconded. Additionally, a probationer shall not be awarded earned discharge credit for any month in which the probationer was sanctioned for conduct that disqualifies the probationer from receiving earned discharge credits as provided by the graduated response grid.

(4) A South Dakota probationer placed on supervised probation who is supervised in another state under the Interstate Compact for Adult Offender Supervision is eligible for earned discharge credits pursuant to §§ 23A-48-15 to 23A-48-22, inclusive.

(5) Earned discharge credits shall be applied to the probation term within fifteen days after the end of the month in which any credit was earned. A probationer who is eligible for earned discharge credits shall be notified of their probation discharge date on a semi-annual basis.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 20th day of February, 2024.

Chapter 241

SCR 24-03

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION OF A NEW RULE TO CREATE A COMMISSION ON ACCESS TO THE COURTS	RULE 24-03

A hearing was held on February 14, 2024, at Pierre, South Dakota, relating to the adoption of a new rule relating to creating a Commission on Access to the Courts and the Court having considered the proposed adoption and oral presentation relating thereto, now, therefore, it is

ORDERED that the adoption of a new rule relating to creating a Commission on Access to the Courts is hereby adopted to read in its entirety as follows:

Adoption of a New Rule to Create a Commission on Access to the Courts

Section 1. That a new rule be adopted to read as follows:

There is hereby created a Commission on Access to the Courts. The commission shall consist of eleven members appointed as follows:

(1) Seven members appointed by the Chief Justice of the Supreme Court, three initially appointed for a term of two years and four appointed for a term of three years.

(2) Four members appointed by the President of the State Bar of South Dakota, two initially appointed for a term of two years and two for a term of three years.

Thereafter, each appointment shall be for a term of three years, beginning on the first day of July. No member may serve more than two consecutive terms.

The Chief Justice of the Supreme Court shall appoint a chair of the commission and the President of the State Bar shall appoint a vice-chair of the commission from their appointed members. The commission members shall serve without compensation. The Commission shall be staffed by the Unified Judicial System.

Section 2. That a new rule be adopted to read as follows:

The Commission on Access to the Courts shall work collaboratively across the justice system to advance efforts to promote equal access to the court and inspire a high level of trust and confidence in the South Dakota court system. This may include:

(1) Recommending improvements in court processes, procedures and policies;

(2) Addressing access to counsel and collaborative efforts with entities that provide legal representation pro bono or at reduced cost for low-income or disadvantaged individuals;

(3) Developing models to assist self-represented litigants and addressing barriers to access to the court system;

(4) Increasing the availability of legal aid services statewide;

(5) Expanding the availability of effective use of technology; and

(6) Providing outreach efforts and strategic planning to ensure timely and effective access to the judicial system.

IT IS FURTHER ORDERED that this rule shall become effective immediately.

DATED at Pierre, South Dakota, this 20th day of February, 2024.

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Chapter 242

SCR 24-04

SUPREME COURT RULES AND ORDERS

IN THE SUPREME COURT
OF THE

STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE AMENDMENT OF SDCL 16-6-1	RULE 24-04

A hearing was held on April 24, 2024, at Pierre, South Dakota, relating to the amendment of SDCL 16-6-1 and the Court having considered the proposed amendment and being fully advised in the premises, now, therefore, it is

ORDERED that SDCL 16-6-1 be and it is hereby amended to read in its entirety as follows:

16-6-1.Number of judges in judicial circuits. The number of circuit judges of each of the judicial circuits established by § 16-5-1.2 is as follows:

(1) First Circuit: Six circuit judges;

(2) Second Circuit: ~~Twelve~~ Fourteen circuit judges;

(3) Third Circuit: Six circuit judges;

(4) Fourth Circuit: Four circuit judges;

(5) Fifth Circuit: Four circuit judges;

(6) Sixth Circuit: Four circuit judges;

(7) Seventh Circuit: Eight circuit judges.

IT IS FURTHER ORDERED that this rule become effective immediately.

DATED at Pierre, South Dakota, this 25th day of April, 2024.

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