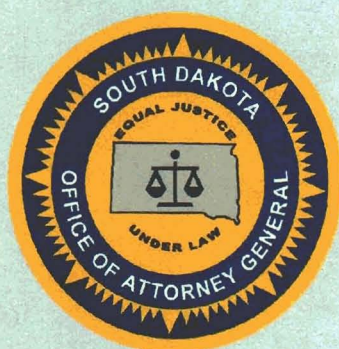


Office of Attorney General

Division of Criminal Investigation



2008

LEGISLATION OF SIGNIFICANCE

June 2008



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

TTY (605) 773-6585

www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

TO: Attorney General Larry Long
Chief Deputy Attorney General Charles McGuigan
South Dakota Attorney General's Office
Director Bryan Gortmaker – South Dakota DCI
Assistant Director Trevor Jones – South Dakota DCI
Division of Criminal Investigation
All Interested Persons

FROM: Scott R. Swier
Assistant Attorney General

DATE: June 2008

RE: **2008 Legislation of Significance Booklet**

Enclosed is the 2008 Legislation of Significance Booklet. In 2008, the South Dakota Legislature considered approximately 620 pieces of legislation. The House introduced 373 bills and the Senate introduced 247 bills. Governor Rounds signed 278 bills into law. The Legislature overrode one (1) of Governor Rounds' vetoes.

The Attorney General requested the introduction of nine (9) pieces of legislation during the Session. The Legislature adopted eight (8) of these nine (9) bills. The Attorney General bills that were adopted are HB 1059, 1060, 1061, 1062, 1064, 1065, 1067, and 1068.

Other bills that may be of particular interest to the Attorney General's Office and the Division of Criminal Investigation are:

- SB 53 revises certain provisions regarding capital punishment.
- SB 65 defines intentional exposure to HIV infection by sexual intercourse as a sex crime subject to registry as a sex offender.
- SB 77 repeals the provision that prohibits radio or television broadcasting or taking of photographs of judicial proceedings from courtrooms.
- SB 133 requires that any adult arrested for a "qualifying offense" provide a DNA sample.

2008 Legislation of Significance Booklet

June 2008

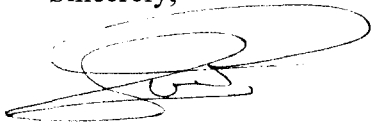
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- SB 186 revises certain provisions regarding public records. This bill was the result of the Attorney General's 2007 Open Government Task Force.
- HB 1001 provides for a jury trial in forfeiture proceedings.
- HB 1053 places certain substances on the controlled substances schedule and declares an emergency.
- HB 1173 revises certain provisions pertaining to the effect of suspended impositions of sentence on parole eligibility of certain offenders.
- HB 1239 permits persons convicted of driving under the influence to operate a vehicle for 24/7 sobriety testing.
- HB 1260 revises sex offender registry provisions for persons without a residence address.
- HB 1271 abolishes the doctrine of *abatement ab initio* of a criminal proceeding and provides for the posthumous sentencing of certain criminal defendants.
- HB 1313 prohibits the use of certain electronic communication devices to communicate threats and harassment.

Please feel free to contact me if you need any additional information. You can access all of the bills introduced during the 2008 Legislative Session at the South Dakota Legislative Research Counsel's website. The web address is:
<http://legis.state.sd.us/sessions/2008/index.aspx>

We are now beginning to prepare for the 2009 Session. If you have any suggestions for new or amended legislation, please submit your ideas by August 15, 2008.

Sincerely,



Scott R. Swier
Assistant Attorney General

SRS/dd

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ATTORNEY GENERAL BILLS

HB 1059, An Act to repeal the restriction on the number of personnel to be employed by the Office of the Attorney General's consumer complaint program.

Section 1. That § 37-23-4.1 be repealed.

~~37-23-4.1. The Office of the Attorney General, consumer complaint program, is limited to four FTE's.~~

HB 1060, An Act to revise the statute of limitations regarding deceptive trade practices.

Section 1. That § 37-24-33 be amended to read as follows:

37-24-33. No action under this chapter may be brought more than ~~two~~four years after the occurrence or discovery of the conduct which is the subject of the action.

HB 1061, An Act to revise the penalty for the distribution or possession with intent to distribute marijuana to a minor.

Section 1. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent

to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. ~~However, the distribution of any amount of marijuana to a minor is a Class 4 felony.~~ The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to

exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.

HB 1062, An Act to include officers of the National Park Service in the definition of a federal law enforcement officer.

Section 1. That § 23A-3-24 be amended to read as follows:

23A-3-24. For the purposes of § 23A-3-25, the term, federal law enforcement officer, means any officer or employee of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshall Service, the Internal Revenue Service, the Secret Service, the Bureau of Alcohol, Tobacco, and Firearms, the United States Postal Inspection Service, the Federal Protective Service, the United States Fish and Wildlife Service, ~~and the Immigration and Customs Enforcement Office of Investigations,~~ and the National Park Service, who is responsible for the prevention or detection of crimes or for the enforcement of the United States Code and who is authorized to arrest, with or without a warrant, any ~~individual~~ person for a violation of the United States Code.

HB 1064, An Act to revise the crime of aggravated incest.

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

22-22A-3. Any person who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and is either :

(1) ~~Is at least sixteen but less than eighteen years of age; and~~

~~———(2)—— Is either:~~

~~———(a)—— The child of the perpetrator or the child of a spouse or former spouse of the perpetrator; or~~

~~(b)(2)~~ Related to the perpetrator within degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6;

is guilty of aggravated incest. Aggravated incest is a Class 3 felony.

Section 2. That chapter 22-22A be amended by adding thereto a NEW SECTION to read as follows:

Any person eighteen years of age or older, who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and who, at the time of the offense, has been placed, and resides, in a licensed foster home is guilty of aggravated incest if the perpetrator is:

(1) The licensed foster care provider; or

(2) A resident of the licensed foster care provider's home and related to the licensed foster care provider by blood or marriage.

Aggravated incest is a Class 3 felony.

HB 1065, An Act to revise certain provisions regarding the 24/7 sobriety program.

Section 1. That § 1-11-19 be amended to read as follows:

1-11-19. Each county, through its sheriff, may participate in the 24/7 sobriety program. If a sheriff is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may designate an entity willing to provide the service. If twice a day testing is ordered, the sheriff, or designated entity, shall establish the testing locations and times for each county but shall have at least one location and two daily testing times approximately twelve hours apart.

The Department of Corrections may participate in the 24/7 sobriety program for electronic alcohol monitoring device testing of parolees.

The Unified Judicial System may participate in the 24/7 sobriety program for electronic alcohol monitoring device testing of persons placed under its supervision.

Section 2. That § 1-11-25 be amended to read as follows:

1-11-25. Any fees collected under §§ 1-11-17 to 1-11-25, inclusive, shall be distributed as follows:

- (1) Any daily user fee collected in the administration of twice a day testing, drug patch testing, or urinalysis testing under the 24/7 sobriety program shall be collected by the sheriff, or the entity designated by the sheriff, and paid into the general fund of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services and ensuring compliance;

- (2) Any installation and deactivation fee collected in the administration of electronic alcohol monitoring device testing shall be collected by the sheriff, or the entity designated by the sheriff, and paid into the general fund of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance;
- (3) Any daily user fee collected in the administration of electronic alcohol monitoring device testing shall be deposited in the 24/7 sobriety fund created by § 1-11-18; and
- (4) The Department of Corrections or the Unified Judicial System may collect an installation fee and a deactivation fee in their administration of electronic alcohol monitoring device testing. These fees shall be deposited into the state general fund.

HB 1067, An Act to make an appropriation to defray operation costs of the 24/7 sobriety program and to declare an emergency.

Section 1. There is hereby appropriated from the law enforcement officers training fund the sum of four hundred thousand dollars (\$ 400,000), or so much thereof as may be necessary, to the Office of the Attorney General's 24/7 sobriety fund, to defray costs of operating the 24/7 sobriety program.

Section 2. The attorney general 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 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.

HB 1068, An Act to authorize the Office of the Attorney General to construct a storage facility in Rapid City, South Dakota, and to make an appropriation therefor.

Section 1. The Office of the Attorney General may contract for the planning, site preparation, construction, utilities, and equipping of a storage facility in Rapid City, South Dakota, to be primarily used for the storage of property and conveyances subject to forfeiture pursuant to § 34-20B-70, at an estimated cost of one hundred thousand dollars.

Section 2. There is hereby appropriated from the drug control fund administered by the attorney general, the sum of one hundred thousand dollars (\$ 100,000), or so much thereof as may be necessary, to the Office of Attorney General to accomplish the purposes of this Act.

Section 3. The design and construction of this facility shall be under the general supervision of the Bureau of Administration and the attorney general as provided in chapter 5-14. The attorney general shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

BILLS OF INTEREST

SB 13, An Act to act to revise certain provisions regarding the suspension of a minor's driving privileges.

Section 1. That § 32-12-15 be amended to read as follows:

32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The Department of Public Safety upon the receipt of a record of conviction for a traffic violation or for a violation of the restrictions in §§ 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13, or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend the minor's driving privileges according to the following schedule:

- (1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's sixteenth birthday or as otherwise required by law;
- (2) A first Class 2 misdemeanor traffic conviction or a comparable conviction of any moving traffic violation of a county or municipal ordinance--suspension for thirty days or as otherwise required by law;
- (3) A first conviction of a violation of the conditions of an instruction permit, a motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit-- suspension for thirty days or as otherwise required by law;

(4) A second Class 2 misdemeanor traffic conviction or a comparable conviction of any moving traffic violation of a county or municipal ordinance-- suspension until the minor's sixteenth birthday or for ninety days, whichever period is longer, or as otherwise required by law; and

(5) A second conviction of a violation of the conditions of an instruction permit, a motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit-- suspension until the minor's sixteenth birthday or for ninety days, whichever period is longer, or as otherwise required by law.

No permit may be suspended for a first violation of §§ 32-14-9.1, 32-21-27, 32-25-5, 32-26-20, or 34A-7-7.

If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege or privilege to apply for a driver license as provided in this section. A conviction for any traffic violation that occurs prior to the issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license or an operator's license shall be placed on the driving record and given the same consideration as any violation that occurs following the issuance of an instruction permit, motorcycle instruction permit,

restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license, or an operator's license.

SB 53, An Act to revise certain provisions related to capital punishment.

Section 1. That § 23A-27A-7 be amended to read as follows:

23A-27A-7. Upon a verdict or judgment of death made by a jury or a judge, the judge presiding at the trial shall sentence the convicted person to death and make the sentence in writing. The judgment of death shall be filed with the papers in the case against the convicted person and certified copies provided to the Governor, the secretary of corrections, the sheriff of the county where the crime was committed, and the warden.

Section 2. That § 23A-27A-15 be amended to read as follows:

23A-27A-15. Whenever judgment of death is rendered, the judge shall also sign and provide to the Governor, the secretary of corrections, the sheriff of the county where the crime was committed, and the warden a warrant of death sentence and execution, along with a brief statement of the facts and circumstances of the case, duly attested by the clerk under the seal of the court. The warrant of death sentence and execution shall describe the conviction and sentence and appoint the week within which the sentence shall be executed. The warrant of death sentence and execution shall be directed to the warden of the state penitentiary at Sioux Falls, commanding the warden to execute the sentence on some day within the week appointed.

Section 3. That § 23A-27A-16 be amended to read as follows:

23A-27A-16. Within ten days after the issuing of a warrant of death sentence and execution under § 23A-27A-15, the sheriff shall deliver the defendant together with certified copies of the warrant of death sentence and execution and the judgment of conviction to the penitentiary.

Section 4. That § 23A-27A-17 be amended to read as follows:

23A-27A-17. The week so appointed shall be not less than six months nor more than eight months after the date of judgment of death. The time of execution within the week shall be left to the discretion of the warden to whom the warrant is directed. The warden shall cause the execution to be performed on some day of such week. Not less than forty-eight hours prior to the execution, the warden shall make a public announcement of the scheduled day and hour of the execution.

Section 5. That § 23A-27A-18 be repealed.

Section 6. That § 23A-27A-19 be amended to read as follows:

23A-27A-19. The Governor may make such investigation of the case as the Governor may deem proper and may require the assistance of the attorney general.

Section 7. That § 23A-27A-20 be amended to read as follows:

23A-27A-20. The Governor may reprieve or suspend the execution of the sentence for such reasonable time as the Governor may see fit for the purpose of completing an investigation or other like proper purpose but the period of

reprieve or suspension shall not in any event, exceed ninety days.

Section 8. That § 23A-27A-21 be amended to read as follows:

23A-27A-21. No judge, officer, commission, or board, other than the Governor, may reprieve or suspend the execution of a judgment of death. However, the warden or deputy warden of the penitentiary is authorized so to do in a case and in the manner prescribed in this chapter or as provided in sections 15 and 20 of this Act. This section does not apply to a stay of proceedings upon appeal or to the issuance of a writ of habeas corpus, certiorari, or other original remedial writ of the Supreme Court.

Section 9. That § 23A-27A-22 be amended to read as follows:

23A-27A-22. If a defendant confined under sentence of death does not appear to be mentally competent to be executed, the warden having custody of the defendant shall notify the Governor, the secretary of corrections, and the sentencing court.

Section 10. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

If the warden notifies the sentencing court that a defendant under a sentence of death does not appear to be mentally competent to be executed, or if the prosecuting attorney or the defense attorney moves for a determination of whether the defendant is mentally competent to be executed, and the sentencing court determines that there is a substantial threshold showing of incompetence to be executed, the sentencing court shall conduct hearings and order mental

examinations pursuant to this section and sections 11, 12, 13, and 14 of this Act. Prior to the date of the hearing, the court may order that a psychiatric examination of the defendant be conducted pursuant to section 11 of this Act, and that a psychiatric report be filed with the court, pursuant to section 12 of this Act. The state has the burden of proving the mental competence of the defendant by a preponderance of the evidence. A defendant is mentally competent to be executed if the defendant is aware of the impending execution and the reason for it. If the defendant has previously been determined to be competent to be executed under this Act and there is a subsequent motion to the sentencing court that the defendant no longer appears to be mentally competent to be executed, there shall be a prima facie showing of a substantial change in circumstances raising a significant question of the defendant's competence to be executed before the sentencing court conducts any further hearing.

Section 11. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Any psychiatric examination ordered pursuant to section 10 of this Act shall be conducted by a licensed or certified psychiatrist, or, if the court finds it appropriate, by more than one such psychiatrist. Each psychiatrist shall be designated by the court. For the purposes of a psychiatric examination ordered pursuant to section 10 of this Act, the defendant shall remain confined under the physical custody of the Department of Corrections.

Section 12. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Any psychiatric report ordered pursuant to section 10 of this Act shall be prepared by the psychiatrist designated to conduct the psychiatric examination, shall be filed with the court with copies provided to the counsel for the defendant and to the prosecuting attorney, and shall include:

- (1) The defendant's history and present symptoms;
- (2) A description of the psychiatric, psychological, and medical tests that were employed and their results; and
- (3) The psychiatrist's determination whether the defendant is mentally competent to be executed as defined in section 10 of this Act.

Section 13. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Upon written request of defense counsel, the court may order a video tape record made of the defendant's psychiatric examination conducted pursuant to section 10 of this Act. Either the prosecuting attorney or the defendant's counsel may request a copy of the video tape record. The video tape record shall be submitted to the court along with the psychiatric report, pursuant to section 12 of this Act.

Section 14. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

At any hearing ordered pursuant to section 10 of this Act, the defendant shall

be represented by counsel and, if financially unable to obtain adequate representation, counsel shall be appointed for the defendant. The defendant shall be afforded an opportunity to testify, to present evidence, to subpoena witnesses on the defendant's behalf, and to confront and cross-examine witnesses who appear at the hearing.

Section 15. That § 23A-27A-24 be amended to read as follows:

23A-27A-24. If the sentencing court finds the defendant is not mentally competent to be executed the sentencing court shall suspend the execution of sentence until the defendant is mentally competent to be executed. The defendant shall remain confined under the physical custody of the Department of Corrections. The sentencing court shall review the defendant's mental condition at least once every six months during the period that the execution of sentence is suspended.

Section 16. That § 23A-27A-26 be amended to read as follows:

23A-27A-26. If the sentencing court determines the defendant is mentally competent to be executed, the sentencing court shall certify the fact to the Governor, the secretary of corrections, and the warden having custody of the defendant. The sentencing court, upon determination the defendant is mentally competent to be executed, shall issue a warrant of death sentence and execution appointing a week beginning within a period of not less than thirty nor more than ninety days from the date of the warrant, for the execution of the defendant pursuant to the defendant's sentence unless the sentence has been commuted or

the defendant pardoned. In no case may the appointed week of execution be sooner than the week appointed by the sentencing court pursuant to § 23A-27A-15.

Section 17. That § 23A-27A-23 be repealed.

Section 18. That § 23A-27A-25 be repealed.

Section 19. That § 23A-27A-27 be amended to read as follows:

23A-27A-27. If there is reasonable ground to believe that a female defendant sentenced to death is pregnant, the warden having her in custody shall arrange for an examination of the defendant to determine her condition. Upon the completion of the examination, the warden shall make a report in writing over the warden's signature, stating the facts, and submit the report to the secretary of corrections, the sentencing court, and the Governor.

Section 20. That § 23A-27A-28 be amended to read as follows:

23A-27A-28. If the examination under § 23A-27A-27 finds that the defendant is pregnant the execution of the sentence shall be suspended by the sentencing court. The defendant may not be executed until a new warrant of death sentence and execution is received from the sentencing court so directing.

Section 21. That § 23A-27A-29 be amended to read as follows:

23A-27A-29. If the execution of a sentence is suspended pursuant to § 23A-27A-28, as soon as the sentencing court is satisfied the defendant is no longer pregnant, the sentencing court shall forthwith issue a warrant of death sentence and execution appointing a week for her execution, pursuant to her sentence.

The week for the execution shall be within a period of not less than thirty nor more than ninety days from the date of the warrant of death sentence and execution. In no case may the appointed week of execution be sooner than the week appointed by the sentencing court pursuant to § 23A-27A-15.

Section 22. That § 23A-27A-30 be repealed.

Section 23. That § 23A-27A-31 be amended to read as follows:

23A-27A-31. If the time period for the execution of any defendant in a capital case has passed by reason of a stay of proceedings incident to appellate review or by reason of the issuance of a writ of habeas corpus, certiorari, or other original remedial writ of the Supreme Court, or for any other reason, the sentencing court shall issue a warrant of death sentence and execution in accordance with § 23A-27A-15 appointing a new week for the execution of the original sentence without requiring the defendant to be brought before the sentencing court. Upon its issuance, the clerk of the court in which the sentence was pronounced shall immediately send a certified copy of the warrant of death sentence and execution to all attorneys of record, to the warden having custody of the defendant, to the secretary of corrections, and to the Governor. The warden shall execute the warrant of death sentence and execution accordingly. This procedure applies to any case in which the time period for carrying out the original warrant of death sentence and execution has elapsed without regard to whether the original warrant was issued prior or subsequent to July 1, 1998.

Section 24. That chapter 23A-27A be amended by adding thereto a NEW

SECTION to read as follows:

From the time of delivery to the penitentiary until the infliction of the punishment of death upon the defendant, unless lawfully discharged from such imprisonment, the defendant shall be segregated from other inmates at the penitentiary. No other person may be allowed access to the defendant without an order of the trial court except penitentiary staff, Department of Corrections staff, the defendant's counsel, members of the clergy if requested by the defendant, and members of the defendant's family. Members of the clergy and members of the defendant's family are subject to approval by the warden before being allowed access to the defendant.

Section 25. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The name, address, qualifications, and other identifying information relating to the identity of any person administering the intravenous injection under chapter 23A-27A are confidential. Disclosure of the foregoing information may not be authorized or ordered. Disclosure of confidential information pursuant to this section concerning the execution of an inmate under chapter 23A-27A is a Class 2 misdemeanor.

Section 26. That § 23A-27A-32 be amended to read as follows:

23A-27A-32. The punishment of death shall be inflicted within the walls of some building at the state penitentiary. The punishment of death shall be inflicted by the intravenous injection of a substance or substances in a lethal

quantity. The warden, subject to the approval of the secretary of corrections, shall determine the substances and the quantity of substances used for the punishment of death. An execution carried out by intravenous injection shall be performed by persons trained to administer the injection who are selected by the warden and approved by the secretary of corrections. The persons administering the intravenous injection need not be physicians, registered nurses, licensed practical nurses, or other medical professionals licensed or registered under the laws of this or any other state. Any infliction of the punishment of death by intravenous injection of a substance or substances in the manner required by this section may not be construed to be the practice of medicine. Any pharmacist or pharmaceutical supplier is authorized to dispense to the warden the substance or substances used to inflict the punishment of death without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law.

Section 27. That § 23A-27A-34 be amended to read as follows:

23A-27A-34. The warden of the penitentiary shall request, by at least two days' previous notice, the presence of the attorney general, the trial judge before whom the conviction was had or the judge's successor in office, the state's attorney and sheriff of the county where the crime was committed, representatives of the victim, at least one member of the news media, and a number of reputable adult citizens to be determined by the warden. All witnesses and persons present at an execution are subject to approval by the

warden.

Section 28. That § 23A-27A-35 be repealed.

Section 29. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The warden shall arrange for the attendance of a person trained to examine the defendant and pronounce death and for the attendance of such penitentiary staff, Department of Corrections staff, and law enforcement officers as deemed necessary to perform the execution and maintain security.

Section 30. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The defendant is permitted to have up to five witnesses present at the execution. Witnesses for the defendant may include counsel, members of the clergy, relatives, or friends.

Section 31. That § 23A-27A-36 be amended to read as follows:

23A-27A-36. The warden may not permit any person to be present at the execution other than those designated in §§ 23A-27A-32, 23A-27A-34 and sections 29 and 30 of this Act and may not permit the presence of any person under the age of eighteen years.

Section 32. That § 23A-27A-37 be amended to read as follows:

23A-27A-37. Prior to the announcement required in § 23A-27A-17, the scheduled day and time fixed by the warden for the execution shall be kept secret and in no manner divulged except privately to the persons invited or

requested to be present as provided by §§ 23A-27A-32, 23A-27A-34 and sections 29 and 30 of this Act. It is a Class 2 misdemeanor for any person to divulge such invitation to anyone or in any manner disclose the scheduled day and time of the execution prior to the announcement required in § 23A-27A-17.

Section 33. That § 23A-27A-41 be repealed.

Section 34. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

In case of disability of the warden to whom the warrant of death sentence and execution is directed, the secretary of corrections shall appoint the deputy warden or such other officer of the Department of Corrections as may be necessary to carry out the warrant of death sentence and execution and to perform all other duties imposed upon the warden by this chapter.

Section 35. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

After the execution, the county coroner shall conduct a postmortem examination of the body of the defendant. The county coroner shall report in writing the result of the examination, stating the nature thereof and the finding made. The report shall be annexed to the certificate of execution mentioned in section 39 of this Act and filed therewith.

Section 36. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Following the death of the defendant by execution, the body may be subject to

an autopsy pursuant to § 24-1-27 and chapter 23-14. Any final autopsy report shall be annexed to and filed with the certificate of execution mentioned in section 39 of this Act.

Section 37. That § 23A-27A-39 be amended to read as follows:

23A-27A-39. After the postmortem examination and any autopsy, the body of the defendant, unless claimed by some relative, shall be interred in a cemetery within the county where the penitentiary is situated.

Section 38. That § 23A-27A-40 be repealed.

Section 39. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The warden or corrections official attending and in charge of the execution shall prepare and sign a certificate of execution setting forth the date, time, place, and manner of execution, and that the defendant was executed in conformity to the judgment of the court and the provisions of this chapter. The certificate of execution document shall be signed by each of the witnesses of the execution attending as allowed in § 23A-27A-34 and section 30 of this Act. The warden or corrections official shall cause the certificate of execution to be filed in the office of the clerk of the sentencing court within ten days after the execution. The original or a certified copy of the death certificate, postmortem examination, and any autopsy report shall be filed with the clerk of the sentencing court within ten days of receipt by the warden or corrections official.

Section 40. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Any person or party participating in good faith in the execution of an inmate under this chapter is immune from any liability, civil or criminal, that might otherwise be incurred or imposed, and has the same immunity for participation in any judicial proceeding resulting from the execution. Immunity also extends in the same manner to any persons who in good faith cooperate in the execution of an inmate under this chapter.

Section 41. That chapter 19-13 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of corrections, the warden of the penitentiary, penitentiary staff, and Department of Corrections staff may not be examined as to communications made to them concerning an execution of an inmate under chapter 23A-27A. The privilege described in this section may be claimed by the secretary of corrections, the warden of the penitentiary, penitentiary staff, Department of Corrections staff, or by any representative of any of the foregoing to be examined and is binding on all of them. However, the secretary of corrections and the warden of the penitentiary may personally waive the privilege described in this section.

Section 42. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

As to any defendant who has been sentenced to death and who is awaiting execution prior to July 1, 2008, the amendment and repeal of existing sections

and enactment of new sections in this Act do not impair or affect any act done, offense committed, or right accruing, accrued, or acquired, or liability, penalty, forfeiture, or punishment incurred prior to July 1, 2008. However, the provisions of existing statute may be asserted, enforced, prosecuted, or inflicted, as fully and to the same extent as if the amendment and repeal of existing sections and enactment of new sections in this Act had not been subsequently enacted.

SB 69, An Act to add marijuana to the list of abusive substances for the purposes of determining child abuse.

Section 1. That § 26-8A-2 be amended to read as follows:

26-8A-2. In this chapter and chapter 26-7A, the term, abused or neglected child, means a child:

- (1) Whose parent, guardian, or custodian has abandoned the child or has subjected the child to mistreatment or abuse;
- (2) Who lacks proper parental care through the actions or omissions of the child's parent, guardian, or custodian;
- (3) Whose environment is injurious to the child's welfare;
- (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary subsistence, supervision, education, medical care, or any other care necessary for the child's health, guidance, or well-being;
- (5) Who is homeless, without proper care, or not domiciled with the child's parent, guardian, or custodian through no fault of the child's parent,

guardian, or custodian;

- (6) Who is threatened with substantial harm;
- (7) Who has sustained emotional harm or mental injury as indicated by an injury to the child's intellectual or psychological capacity evidenced by an observable and substantial impairment in the child's ability to function within the child's normal range of performance and behavior, with due regard to the child's culture;
- (8) Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the child's parent, guardian, custodian, or any other person responsible for the child's care;
- (9) Who was subject to prenatal exposure to abusive use of alcohol, marijuana, or any controlled drug or substance not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B; or
- (10) Whose parent, guardian, or custodian knowingly exposes the child to an environment that is being used for the manufacture, use, or distribution of methamphetamines or any other unlawfully manufactured controlled drug or substance.

SB 77, An Act to repeal the provision that prohibits radio or television broadcasting or taking of photographs of judicial proceedings from courtrooms.

Section 1. That § 23A-44-16 be repealed.

Section 2. That § 23A-12-9 be amended to read as follows:

23A-12-9. If a defendant has been charged with a violation of subdivision 22-22-1(1), (5), or (6) or § 22-22-7, where the victim is less than sixteen years of age, the prosecuting attorney or defense attorney may apply for an order that the victim's testimony at the preliminary hearing or at a deposition, in addition to being stenographically recorded, be recorded and preserved on videotape. The scope and manner of the examination and cross-examination shall be such as would be allowed at the trial. Notice of any such deposition pursuant to this section shall conform in all respects to the notice requirements contained in § 23A-12-2.

The application for the order shall be in writing and made at least three days before the preliminary hearing or deposition.

Upon timely receipt of the application, the court may order that the testimony of the victim given at the preliminary hearing or deposition be taken and preserved on videotape. The videotape shall be transmitted to the clerk of the court in which the action is pending.

If at the time of trial the court finds that the victim is otherwise unavailable within the meaning of § 19-16-29, or that such testimony would in the opinion of

the court be substantially detrimental to the well-being of the victim, the court may admit the videotape of the victim's testimony at the preliminary hearing or deposition as former testimony under § 19-16-30.

SB 80, An Act to restrict the release or use of social security numbers by the state and its political subdivisions unless certain security measures are taken.

Section 1. No state agency or any of its political subdivisions or any official, agent, or employee of any state agency or political subdivision may:

- (1) Knowingly release or post any person's social security number on the internet; or
- (2) Require any person to transmit the person's social security number over the internet, unless the connection is secure or the social security number is encrypted; or
- (3) Require any person to use the person's social security number to access an internet website, unless a password or unique personal identification number or other authentication device is also required to access the internet website.

SB 83, An Act to repeal a medical malpractice limitation applicable to minors aged six or over.

Section 1. That § 15-2-22.1 be repealed.

SB 109, An Act to authorize the Fourth Circuit drug court program in the Unified Judicial System, to make an appropriation therefor, and to declare an emergency.

Section 1. The Unified Judicial System may continue the Fourth Circuit drug court program for the purpose of providing intensive, supervised rehabilitation to nonviolent adult felony offenders who abuse controlled substances.

Section 2. There is hereby appropriated from the general fund the sum of fifty-nine thousand seven hundred fifteen dollars (\$ 59,715), one hundred seventy-six thousand five hundred ninety-six dollars (\$ 176,596) in federal fund expenditure authority, and thirty thousand eight hundred dollars (\$30,800) in other fund expenditure authority, or so much thereof as may be necessary, and 3.0 FTEs, to the Unified Judicial System for costs related to the Fourth Circuit drug court program.

Section 3. That section 2 of chapter 136 of the 2007 Session Laws be amended to read as follows:

Section 2. There is hereby appropriated from the general fund the sum of seventy-eight thousand dollars (\$78,000), one hundred seventy-five thousand

dollars (\$175,000) in federal fund expenditure authority, and five thousand dollars (\$5,000) in other fund expenditure authority, or so much thereof as may be necessary, and 3.0 FTEs to the Unified Judicial System for costs related to the drug court program.

Section 4. The state court administrator shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 5. Any amounts appropriated in section 2 of this Act not lawfully expended or obligated by June 30, 2009 , shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 6. Whereas, section 3 of this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and section 3 of this Act shall be in full force and effect from and after its passage and approval.

SB 133, An Act to require that any adult arrested for a qualifying offense provide a DNA sample.

Section 1. That chapter 23-5A be amended by adding thereto a NEW SECTION to read as follows:

Any person eighteen years of age or older who is arrested for a qualifying offense shall provide a DNA sample upon booking or as determined by the supervising agency. If it is determined that the person's DNA sample is included in the State DNA Database, no additional sample is required.

Section 2. That § 23-5A-4 be amended to read as follows:

23-5A-4. Any person convicted or adjudicated delinquent for a qualifying offense on or after July 1, 2003, shall provide a DNA sample upon intake or as determined by the supervising agency. However, this requirement does not apply if the person's DNA sample is included in the State DNA Database. A person who has been convicted or adjudicated delinquent for a qualifying offense before July 1, 2003, and who is still incarcerated or under supervision as of July 1, 2003, shall provide a DNA sample as determined by the supervising agency or institution.

Section 3. That § 23-5A-28 be amended to read as follows:

23-5A-28. Any person whose DNA record or DNA profile has been included in the State DNA Database in accordance with this chapter may request expungement on the grounds that the arrest that led to the inclusion of the person's DNA record or DNA profile has not resulted in a felony charge within

one year; has been resolved by a dismissal, acquittal, or misdemeanor conviction; or has not resulted in a felony conviction; or the conviction or delinquency adjudication on which the authority for including that person's DNA record or DNA profile was based has been reversed and the case dismissed.

SB 186, An Act to revise certain provisions regarding public records.

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

1-26D-4. Hearing examiners have all powers delineated in §§ 1-26-19.1 and 1-26-19.2 and shall hear all contested cases that arise under Titles 10 and 58 and chapter 1-27.

Section 2. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act do not apply to the Unified Judicial System or Public Utilities Commission.

Section 3. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Any informal request for disclosure of documents or records shall be made to the custodian of the record. The custodian of the record may then provide the requestor with the document or record upon payment of the actual cost of mailing or transmittal, the actual cost of reproduction, or other fee established by statute or administrative rule. A requestor that makes an informal request requiring the dedication of staff time in excess of one hour may be required to

pay the cost of the staff time necessary for the location, assembly, or reproduction of the public record. If any records are required or permitted to be made public upon request and no other rate is prescribed for reproduction or retrieval of such records, the Bureau of Administration shall establish, by rules promulgated pursuant to chapter 1-26, the maximum rate, or the formula for calculating rates, for reproduction and retrieval.

Section 4. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

For any informal request reasonably likely to involve a fee in excess of fifty dollars, the custodian shall provide an estimate of cost to the requestor prior to assembling the documents or records and the requestor shall confirm in writing his or her acceptance of the cost estimate and agreement to pay. The custodian may exercise discretion to waive or reduce any fee required under this section if the waiver or reduction of the fee would be in the public interest.

Section 5. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If an informal request is denied in whole or in part by the custodian of a document or record, a written request may be made by the requestor pursuant to this section:

(1) A written request may be made to the public record officer of the public entity involved. The public record officer shall promptly respond to the written request but in no event later than ten business days from receipt of the

request. The public record officer shall respond to the request by:

(a) Providing the record in whole or in part to the requestor upon payment of any applicable fees pursuant to sections 3 and 4 of this Act;

(b) Denying the request for the record; or

(c) Acknowledging that the public record officer has received the request and providing an estimate of the time reasonably required to further respond thereto;

(2) Additional time to respond to the written request under subsection (1)(c) of this section may be based upon the need to clarify the nature and scope of the written request, to locate and assemble the information requested, to notify any third persons or government agencies affected by the written request, or to determine whether any of the information requested is not subject to disclosure and whether a denial should be made as to all or part of the written request;

(3) If a written request is unclear, the public record officer may require the requestor to clarify which records are being sought. If the requestor fails to provide a written response to the public record officer's request for clarification within ten business days, the request shall be deemed withdrawn and no further action by the public records officer is required;

(4) If the public record officer denies a written request in whole or in part, the denial shall be accompanied by a written statement of the reasons for the denial;

(5) If the public record officer fails to respond to a written request

within ten business days, or fails to comply with the estimate provided under subsection (1)(3) of this section without provision of a revised estimate, the request shall be deemed denied.

Section 6. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

If a public record officer denies a written request in whole or in part, or if the requestor objects to the public record officer's estimate of fees or time to respond to the request, a requestor may within ninety days of the denial commence a civil action by summons or, in the alternative, file a written notice of review with the Office of Hearing Examiners. The notice of review shall be mailed, via registered or certified mail, to the Office of Hearing Examiners and shall contain:

- (1) The name, address, and telephone number of the requestor;
- (2) The name and business address of the public record officer denying the request;
- (3) The name and business address of the agency, political subdivision, municipal corporation, or other entity from which the request has been denied;
- (4) A copy of the written request;
- (5) A copy of any denial or response from the public record officer; and
- (6) Any other information relevant to the request that the requestor desires to be considered.

Section 7. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt, the Office of Hearing Examiners shall promptly mail a copy of the notice of review filed pursuant to section 6 of this Act and all information submitted by the requestor to the public record officer named in the notice of review. The entity denying the written request may then file a written response to the Office of Hearing Examiners within ten business days. If the entity does not file a written response within ten business days, the Office of Hearing Examiners shall act on the information provided. The Office of Hearing Examiners shall provide a reasonable extension of time to file a written response upon written request or agreement of parties.

Section 8. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon receipt and review of the submissions of the parties, the Office of Hearing Examiners shall make written findings of fact and conclusions of law, and a decision as to the issue presented. Before issuing a decision, the Office of Hearing Examiners may hold a hearing pursuant to chapter 1-26 if good cause is shown.

Section 9. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The aggrieved party may appeal the decision of the Office of Hearing Examiners to the circuit court pursuant to chapter 1-26. In any action or proceeding under this Act, no document or record may be publicly released until a final decision or judgment is entered ordering its release.

Section 10. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The public record officer for the state is the secretary, constitutional officer, elected official, or commissioner of the department, office, or other division to which a request is directed. The public record officer for a county is the county auditor or the custodian of the record for law enforcement records. The public record officer for a first or second class municipality is the finance officer or the clerk or the custodian of the record for law enforcement records. The public record officer for a third class municipality is the president of the board of trustees or the custodian of the record for law enforcement records. The public record officer for an organized township is the township clerk. The public record officer for a school district is the district superintendent or CEO. The public record officer for a special district is the chairperson of the board of directors. The public record officer for any other entity not otherwise designated is the person who acts in the capacity of the chief financial officer or individual as designated by the entity.

Section 11. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The following forms are prescribed for use in the procedures provided for in sections 3 to 10, inclusive, of this Act, but failure to use or fill out completely or accurately any of the forms does not void acts done pursuant to those sections

provided compliance with the information required by those sections is provided in writing.

**NOTICE OF REVIEW
REQUEST FOR DISCLOSURE OF PUBLIC RECORDS**

Date of Request: _____
Name of Requestor: _____
Address of Requestor: _____
Telephone Number of Requestor: _____

Type of Review Being Sought:
____ Request for Specific Record
____ Estimate of Fees
____ Estimate of Time to Respond
Short Explanation of Review Being Sought Including Specific Records Requested:

Name of Public Record Officer: _____
Address of Public Record Officer: _____
Name of Governmental Entity: _____
Address of Governmental Entity: _____

You must include with the submission of this Notice of Review - Request for Disclosure of Public Records form the following information: (1) A copy of your written request to the public record officer; (2) A copy of the public record officer's denial or response to your written request, if any; and (3) Any other information relevant to the request that you desire to be considered.

I hereby certify that the above information is true and correct to the best of my knowledge.

Signature of Requestor: _____

The Notice of Review - Request for Disclosure of Public Records form shall be completed and submitted, via registered or certified mail, return receipt, to the following address:

Office of Hearing Examiners
500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

**SOUTH DAKOTA OFFICE OF HEARING EXAMINERS
NOTICE OF REQUEST FOR DISCLOSURE
OF PUBLIC RECORDS**

TO: (Public Record Officer & Governmental Entity)

_____ has
filed a Notice of Review - Request for Disclosure of Public Records. A copy of the
Notice of Review - Request for Disclosure of Public Records is attached for your
review.

You may file a written response to the Notice of Review - Request for
Disclosure of Public Records within ten (10) business days of receiving this
notice, exclusive of the day of service, at the following address:

Office of Hearing Examiners
500 E. Capitol Avenue
Pierre, South Dakota 57501
605-773-6811

The Office of Hearing Examiners may issue its written decision on the
information provided and will only hold a hearing if it deems a hearing
necessary.

If you have any questions, please contact the Office of Hearing Examiners.

Dated this ____ day of _____, 20____.

Office of Hearing Examiners

SB 199, An Act to revise certain provisions concerning public meetings.

Section 1. That § 1-25-1 be amended to read as follows:

1-25-1. Except as otherwise provided by law, the official meetings of the state and the political subdivisions thereof, including all related boards, commissions and other agencies, and the official meetings of boards, commissions and agencies created by statute or which are nontaxpaying and derive a source of revenue directly from public funds, shall be open to the public, except as provided in this chapter. It does not constitute an official meeting if members of a political subdivision of this state are attending a meeting of the state or one of its political subdivisions, a board, a commission, an association, an agency, or any other public entity for which public notice is provided pursuant to § 1-25-1.1 for the purpose of providing information or observing, and the notice requirements in § 1-25-1.1 do not apply. Meetings, including executive or closed meetings may be conducted by teleconference. Members shall be deemed present if they answer present to the roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by roll call. Except for executive or closed meetings held by teleconference, there shall be provided one or more places at which the public may listen to and participate in the proceeding. Except for executive or closed meetings held by teleconference of related boards and commissions of the state, there shall be provided two or more places at which the public may listen to and participate in the proceeding. Except for the Digital Dakota Network, no teleconference may be used in conducting hearings or

taking final disposition pursuant to § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25.

A violation of this section is a Class 2 misdemeanor.

HB 1001, An Act to provide for a jury trial in forfeiture proceedings.

Section 1. That § 34-20B-88 be amended to read as follows:

34-20B-88. If a verified answer is filed, the forfeiture proceedings shall be set for a trial on a day not more than sixty days from the date of the filing. Any party may demand a trial by jury for the forfeiture proceedings pursuant to subsection 15-6-38(b). At the trial, the state shall establish probable cause for instituting the forfeiture action following which any owner, party in interest, or claimant who has filed a verified answer has the burden of proving that the property seized is not subject to forfeiture under this chapter. If the court or a jury finds that the property is not subject to forfeiture under this chapter, the court shall order the property released to the owner, party in interest, or claimant according to such person's right, title, or interest. The court shall order the property forfeited if the court or a jury determines that such property was subject to forfeiture.

HB 1030, An Act to revise certain provisions regarding the appointment of notaries public and the requirements of notary public seals.

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

18-1-1. The secretary of state shall appoint notaries public, who have

residence in this state as defined in § 12-1-4. A notary public shall hold office for six years unless sooner removed by the secretary of state. An applicant to become a notary public shall complete an application form as prescribed by the secretary of state pursuant to chapter 1-26. The applicant shall submit a fee of twenty-five dollars. The application shall include the applicant's name, street, city, state, zip code, county, and date of birth. The applicant shall apply in the same name as that which will appear as the seal imprint. Each notary may, anywhere in this state, administer oaths and perform all other duties required by law. The secretary of state may not appoint as a notary public any person who has been convicted of a felony. The secretary of state may also appoint an applicant as a notary public if the applicant resides in a county bordering South Dakota and the applicant's place of work or business is within the state of South Dakota.

Section 2. That § 18-1-3.1 be amended to read as follows:

18-1-3.1. Each notary public shall have a seal which shall be used for the purpose of acknowledging documents. The seal shall be of a type approved by the secretary of state and shall contain at least the following:

- (1) The notary's name;
- (2) The words, South Dakota;
- (3) The words, notary public; and
- (4) A border surrounding the imprint.

In addition, rubber stamp seals shall have the word, seal.

If a seal is used by a notary public, the notary public shall write, or print by a

device made for such printing, below the seal's imprint or print and if not provided by the form, the words, my commission expires, and shall provide a date therefor.

HB 1053, An Act to place certain substances on the controlled substances schedule and to declare an emergency.

Section 1. That § 34-20B-16 be amended to read as follows:

34-20B-16. Any of the following substances including their salts, isomers, and salts of isomers is included in Schedule II except those narcotic drugs listed in other schedules 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:

- (1) Opium, coca leaves, and opiate;
- (2) Any salt, compound, derivative, or preparation of opium, coca leaves, or opiate, excluding apomorphine, dextrorphan, and naloxone;
- (3) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in subdivisions (1) and (2), except that these substances may not include decocainized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine; and may not include the isoquinoline alkaloids of opium;
- (4) Opium poppy and poppy straw;

- (5) Amphetamine;
- (6) Methamphetamine;
- (7) Amobarbital;
- (8) Pentobarbital;
- (9) Secobarbital;
- (10) Methylphenidate;
- (11) Phenmetrazine;
- (12) Etorphine;
- (13) Diprenorphine;
- (14) Deleted by SL 2000, ch 170, § 1;
- (15) Nabilone;
- (16) Glutethimide;
- (17) Phencyclidine immediate precursors:
 - (a) 1-phenylcyclohexylamine;
 - (b) 1-piperidinocyclohexanecarbonitrile (PCC);
- (18) Lisdexamfetamine, its salts, isomers, and salts of its isomers.

Section 2. That § 34-20B-17 be amended to read as follows:

34-20B-17. Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters and ethers, is included in Schedule II, unless specifically excepted, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Alphaprodine;

- (2) Anileridine;
- (3) Bezitramide;
- (4) Diphenoxylate;
- (5) Fentanyl;
- (6) Isomethadone;
- (7) Levomethorphan;
- (8) Levorphanol;
- (9) Metazocine;
- (10) Methadone;
- (11) Methadone-intermediate, 4-cyano-2-dimethylamine-1, 4-diphenyl
butane;
- (12) Moramide-intermediate, 2-methyl-3-morpholino-1, 1-
diphenylpropane-carboxylic acid;
- (13) Pethidine;
- (14) Pethidine-intermediate, A, 4-cyano-1-methyl-4-phenylpiperidine;
- (15) Pethidine-intermediate, B, ethyl-4-phenylpiperidine-4-carboxylate;
- (16) Pethidine-intermediate, C, 1-methyl-4-phenylpiperidine-4-
carboxylic acid;
- (17) Phenazocine;
- (18) Piminodine;
- (19) Racemethorphan;
- (20) Racemorphan;

- (21) Sufentanil;
- (22) Alfentanil;
- (23) Carfentanil;
- (24) Levo-alpha-acetylmethadol, also known as levo-alpha-acetylmethadyl acetate or LAAM;
- (25) Remifentanil;
- (26) Oxymorphone;
- (27) Oripavine (3-O-demethylthebaine or 6,7,8,14-tetrahydro-4,5-alpha-epoxy-6-methoxy-17-methylmorphinan-3-ol).

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.

HB 1060, An Act to revise the statute of limitations regarding deceptive trade practices.

Section 1. That § 37-24-33 be amended to read as follows:

37-24-33. No action under this chapter may be brought more than four years after the occurrence or discovery of the conduct which is the subject of the action.

HB 1065, An Act to revise certain provisions regarding the 24/7 sobriety program.

Section 1. That § 1-11-19 be amended to read as follows:

1-11-19. Each county, through its sheriff, may participate in the 24/7 sobriety program. If a sheriff is unwilling or unable to participate in the 24/7 sobriety program, the sheriff may designate an entity willing to provide the service. If twice a day testing is ordered, the sheriff, or designated entity, shall establish the testing locations and times for each county but shall have at least one location and two daily testing times approximately twelve hours apart.

The Department of Corrections may participate in the 24/7 sobriety program for electronic alcohol monitoring device testing of parolees.

The Unified Judicial System may participate in the 24/7 sobriety program for electronic alcohol monitoring device testing of persons placed under its supervision.

Section 2. That § 1-11-25 be amended to read as follows:

1-11-25. Any fees collected under §§ 1-11-17 to 1-11-25, inclusive, shall be distributed as follows:

(1) Any daily user fee collected in the administration of twice a day testing, drug patch testing, or urinalysis testing under the 24/7 sobriety program shall be collected by the sheriff, or the entity designated by the sheriff, and paid into the general fund of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services and ensuring compliance;

(2) Any installation and deactivation fee collected in the administration

of electronic alcohol monitoring device testing shall be collected by the sheriff, or the entity designated by the sheriff, and paid into the general fund of the proper county, the proceeds of which shall be applied and used only to defray the recurring costs of the 24/7 sobriety program including maintaining equipment, funding support services, and ensuring compliance;

(3) Any daily user fee collected in the administration of electronic alcohol monitoring device testing shall be deposited in the 24/7 sobriety fund created by § 1-11-18; and

(4) The Department of Corrections or the Unified Judicial System may collect an installation fee and a deactivation fee in their administration of electronic alcohol monitoring device testing. These fees shall be deposited into the state general fund.

HB 1073, An Act to require abuse and neglect registry screening for certain special advocacy volunteers and guardians ad litem.

Section 1. That § 26-8A-12.2 be amended to read as follows:

26-8A-12.2. Upon receipt of names of current or potential employees or volunteers from the Juvenile Division of the Department of Corrections, any adolescent treatment program operated by the Department of Human Services, any entity recognized as administering a CASA program as provided in § 16-2-51, or a court considering appointment of a guardian ad litem for a child in a proceeding pursuant to chapter 26-8A, the Department of Social Services shall

compare the names to the central registry for abuse and neglect and report any findings to the requesting program director, to the Bureau of Personnel human resource manager, or to the court. Any potential employee or volunteer under this section shall give written consent prior to completion of the abuse and neglect screening. Failure to submit to abuse and neglect screening disqualifies an applicant from employment or appointment.

HB 1122, An Act to increase the jurisdictional amount in certain civil actions and small claims proceedings.

Section 1. That § 16-12B-13 be amended to read as follows:

16-12B-13. A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try and determine all civil actions, if the debt, damage, claim, or value of the property involved does not exceed twelve thousand dollars. Any magistrate court with a magistrate judge presiding has jurisdiction in small claims proceedings, if the debt, damage, claim, or value of the property involved does not exceed twelve thousand dollars.

Section 2. That § 16-12C-13 be amended to read as follows:

16-12C-13. A magistrate court with a clerk magistrate presiding has concurrent jurisdiction with the circuit courts, in noncontested civil actions or noncontested small claims proceedings where the amount of money or damage does not exceed twelve thousand dollars, to take the necessary evidence and to enter a judgment.

HB 1129, An Act to establish the Commission on Equal Access to Our Courts and to make an appropriation therefor and to provide for the distribution of any residual funds from class action lawsuits to the commission or other nonprofit charitable organizations.

Section 1. There is hereby created the Commission on Equal Access to Our Courts. The commission shall consist of seven members appointed as follows:

(1) Three members by the Governor, one initially appointed for a term of one year, one initially appointed for a term of two years, and one for a term of three years, as designated by the Governor. The Governor shall appoint members who are not lawyers;

(2) Two members appointed by the Chief Justice of the Supreme Court, one initially appointed for a term of two years and one for a term of three years, as designated by the Chief Justice. The Chief Justice shall appoint members who are judges or lawyers;

(3) Two members appointed by the president of the State Bar of South Dakota, one initially appointed for a term of one year and one for a term of three years, as designated by the president. The president shall appoint members who are lawyers.

Thereafter, each appointment shall be for a term of three years, beginning on the first day of July. The commission members shall serve without compensation.

Section 2. The Commission on Equal Access to Our Courts shall provide

grants to nonprofit entities that are funded, or nonprofit entities contracting with nonprofit entities that are funded, by the Legal Services Corporation and deliver legal services to persons meeting income eligibility guidelines.

Section 3. Any order settling a class action lawsuit that results in the creation of a common fund for the benefit of the class shall provide for the distribution of any residual funds to the Commission on Equal Access to Our Courts. However, up to fifty percent of the residual funds may be distributed to one or more other nonprofit charitable organizations that serve the public good if the court finds there is good cause to approve such a distribution as part of the settlement. For the purposes of this section, residual funds are any funds left over after payment of class member claims, attorney fees and costs, and any reversions to a defendant agreed upon by the parties and approved by the court. This section does not apply to any class action lawsuit against the State of South Dakota or any of its political subdivisions.

Section 4. There is hereby appropriated from the general fund the sum of five thousand dollars (\$ 5,000), or so much thereof as may be necessary, to the Commission on Equal Access to Our Courts as established by this Act.

Section 5. The chair of the Commission on Equal Access to Our Courts shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

HB 1149, An Act to revise certain provisions regarding protection orders granted upon a finding of domestic abuse.

Section 1. That § 25-10-5 be amended to read as follows:

25-10-5. Upon notice and a hearing, if the court finds by a preponderance of the evidence that domestic abuse has taken place, the court may provide relief as follows:

- (1) Restrain any party from committing acts of domestic abuse;
- (2) Exclude the abusing party from the dwelling which the parties share or from the residence of the petitioner;
- (3) Award temporary custody or establish temporary visitation with regards to minor children of the parties;
- (4) Establish temporary support for minor children of the parties or a spouse;
- (5) Order that the abusing party obtain counseling;
- (6) Order other relief as the court deems necessary for the protection of a family or household member, including orders or directives to a sheriff or constable.

Any relief granted by the order for protection shall be for a fixed period and may not exceed five years.

If any minor child resides with either party, the court shall order that the abusing party receive instruction on parenting approved or provided by the Department of Social Services as part of any relief granted.

HB 1151, An Act to regulate the location and hours of operation of adult oriented businesses.

Section 1. No adult oriented business established after June 30, 2008, may be located within one-fourth mile of a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship. For the purposes of this section, measurements shall be made in a straight line in all directions, without regard to intervening structures or objects, from the nearest point on the property line of a parcel containing an adult oriented business to the nearest point on the property line of a parcel containing a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship. An adult oriented business lawfully operating in conformity with this section does not violate this section if a child welfare agency, a private or public school, a public playground, a public recreational facility, a residence, or a place of worship subsequently locates within one-fourth mile of the adult oriented business. A violation of this section is a Class 1 misdemeanor. Each day of violation constitutes a separate offense.

Section 2. No adult arcade, adult bookstore or video store, adult cabaret, adult motion picture theater, adult theater, or nude model studio may remain open at any time between the hours of 2:00 a.m. and 8:00 a.m. on Monday through Saturday and between the hours of 2:00 a.m. and 12:00 noon on Sunday. A violation of this section is a Class 1 misdemeanor. Each day of violation

constitutes a separate offense.

Section 3. Section 1 of this Act does not prohibit any county or municipality from enacting and enforcing any ordinance that regulates the location of an adult oriented business.

Section 4. Section 2 of this Act does not prohibit any county or municipality from enacting and enforcing any ordinance that regulates an adult arcade, adult bookstore or video store, adult cabaret, adult motion picture theater, adult theater, or nude model studio.

Section 5. If there is reason to believe that a violation of section 1 of this Act is being committed in any county or city, the state's attorney of the county shall, or a citizen of this state who resides in the county or city in the citizen's own name may, maintain an action to abate and prevent the violation and to enjoin perpetually any person who is committing the violation and the owner, lessee, or agent of the building or place in or on which the violation is occurring from directly or indirectly committing or permitting the violation.

Section 6. Terms used in this Act mean:

(1) "Adult arcade," any place to which the public is permitted or invited and in which coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image producing devices are maintained to show images involving specific sexual activities or specific anatomical areas to persons in booths or viewing rooms;

(2) "Adult bookstore or video store," a commercial establishment that offers for sale or rent any of the following as one of its principal business purposes:

(a) Books, magazines, periodicals, or other printed matter, photographs, films, motion pictures, videocassettes or reproductions or slides, or other visual representations that depict or describe specific sexual activities or specific anatomical areas;

(b) Instruments, devices, or paraphernalia that are designed for use in connection with specific sexual activities;

(3) "Adult cabaret," any nightclub, bar, restaurant, or other similar commercial establishment that regularly features:

(a) Persons who appear in a state of nudity or seminudity;

(b) Live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities;

(c) Films, motion pictures, videocassettes, slides or other photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas;

(4) "Adult motion picture theater," a commercial establishment in which, for any form of consideration, films, motion pictures, videocassettes, slides, or other similar photographic reproductions that are characterized by the depiction or description of specific sexual activities or specific anatomical areas are predominantly shown;

(5) "Adult oriented business," any adult arcade, adult bookstore or video store, cabaret, adult live entertainment establishment, adult motion picture theater, adult theater, massage establishment that offers adult service, or nude model studios;

(6) "Adult service," dancing, serving food or beverages, modeling, posing, wrestling, singing, reading, talking, listening, or other performances or activities conducted for any consideration in an adult oriented business by a person who is nude or seminude during all or part of the time that the person is providing the service;

(7) "Adult theater," a theater, concert hall, auditorium, or similar commercial establishment that predominantly features persons who appear in a state of nudity or who engage in live performances that are characterized by the exposure of specific anatomical areas or specific sexual activities;

(8) "Massage establishment," an establishment in which a person, firm, association, or corporation engages in or permits massage activities, including any method of pressure on, friction against, stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of external soft parts of the body with the hands or with the aid of any mechanical apparatus or electrical apparatus or appliance. This subdivision does not apply to:

(a) Physicians who are licensed pursuant to chapter 36-4 or a podiatrist licensed pursuant to chapter 36-8;

(b) Registered nurses or licensed practical nurses who are licensed

pursuant to chapter 36-9;

(c) Physician assistants who are licensed pursuant to chapter 36-4A or certified nurse practitioners and certified nurse midwives who are licensed pursuant to chapter 36- 9A;

(d) Physical therapists licensed pursuant to chapter 36-10;

(e) Athletic trainers licensed pursuant to chapter 36-29;

(f) Massage therapists licensed pursuant to chapter 36-35;

(g) Chiropractors licensed pursuant to chapter 36-5;

(9) "Nude model studio," a place in which a person who appears in a state of nudity or who displays specific anatomical areas is observed, sketched, drawn, painted, sculptured, photographed, or otherwise depicted by other persons who pay money or other consideration. The term, nude model studio, does not include a proprietary school that is licensed by this state, a college, or a university that is supported entirely or in part by taxation, a private college or university that maintains and operates educational programs in which credits are transferable to a college or university that is supported entirely or in part by taxation or a structure to which the following apply:

(a) A sign is not visible from the exterior of the structure and no other advertising appears indicating that a nude person is available for viewing;

(b) A student must enroll at least three days in advance of a class in order to participate; and

(c) No more than one nude or seminude model is on the premises at any time;

(10) "Nude," "nudity," or "state of nudity," any of the following:

(a) The appearance of a human anus, genitals, or a female breast below a point immediately above the top of the areola;

(b) A state of dress that fails to opaquely cover a human anus, genitals, or a female breast below a point immediately above the top of the areola;

(11) "Place of worship," a structure where persons regularly assemble for worship, ceremonies, rituals, and education relating to a particular form of religious belief and which a reasonable person would conclude is a place of worship by reason of design, signs, or architectural or other features;

(12) "Residence," a permanent dwelling place;

(13) "Seminude," a state of dress in which clothing covers no more than the genitals, pubic region, and female breast below a point immediately above the top of the areola, as well as portions of the body that are covered by supporting straps or devices;

(14) "Specific anatomical areas," any of the following:

(a) A human anus, genitals, the pubic region, or a female breast below a point immediately above the top of the areola that is less than completely and opaquely covered;

(b) Male genitals in a discernibly turgid state even if completely and opaquely covered;

- (15) "Specific sexual activities," any of the following:
- (a) Human genitals in a state of sexual stimulation or arousal;
 - (b) Sex acts, normal or perverted, actual or simulated, including acts of human masturbation, sexual intercourse, oral copulation, or sodomy;
 - (c) Fondling or other erotic touching of the human genitals, pubic region, buttocks, anus, or female breast; or
 - (d) Excretory functions as part of or in connection with any of the activities under subsection (a), (b), or (c) of this subdivision.

HB 1163, An Act to increase the duration of juvenile diversion programs.

Section 1. That § 26-7A-11 be amended to read as follows:

26-7A-11. A report of a preliminary investigation involving an apparent child in need of supervision or an apparent delinquent child may be referred under § 26-7A-10 only if:

- (1) The child and the child's parents, guardian, or other custodian were informed of their constitutional and legal rights, including being represented by an attorney at every stage of the proceedings if a petition is filed;
 - (2) The facts are admitted and establish prima facie jurisdiction; and
 - (3) Written consent is obtained from the child's parents, guardian, or custodian and from the child if the child is of sufficient age and understanding.
- Efforts to effect informal adjustment may extend no longer than six months from the date of such consent.

HB 1173, An Act to revise certain provisions pertaining to the effect of suspended impositions of sentence on parole eligibility of certain offenders.

Section 1. That chapter 24-15A be amended by adding thereto a NEW SECTION to read as follows:

If a person receives a suspended imposition of sentence for an offense committed on or after July 1, 2008, and that offense constitutes a felony under the laws of the state, any other state, or the United States at the time of the suspension of imposition, that offense, whether or not discharge and dismissal have occurred, shall be considered a prior felony conviction for purposes of establishment of an initial parole date pursuant to this chapter. The date of the first order suspending the imposition of sentence, whether or not discharge and dismissal have occurred, shall be the date of conviction for purposes of establishment of an initial parole date pursuant to this chapter.

HB 1178, An Act to make an appropriation for the costs related to the intensive methamphetamine treatment program in the women's state correctional system.

Section 1. There is hereby appropriated from the general fund the sum of nine hundred nineteen thousand six hundred twenty-six dollars (\$ 919,626), or so much thereof as may be necessary, and 6.0 FTEs to the Department of Human Services for costs related to the intensive methamphetamine treatment program in the women's state correctional system.

Section 2. There is hereby appropriated from the general fund the sum of six hundred ninety-four thousand seventy-eight dollars (\$ 694,078), or so much thereof as may be necessary, and 9.0 FTEs to the Department of Corrections for costs related to the intensive methamphetamine treatment program in the women's state correctional system.

Section 3. There is hereby appropriated from other fund expenditure authority the sum of fifty- three thousand seven hundred thirty dollars (\$ 53,730), or so much thereof as may be necessary, and 1.0 FTE to the Department of Health for costs related to the intensive methamphetamine treatment program in the women's state correctional system.

Section 4. The secretary of the Department of Human Services, the secretary of the Department of Corrections, or 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 5. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2009 , shall revert in accordance with the procedures prescribed in chapter 4-8.

HB 1201, An Act to revise certain provisions regarding the placement or return of abused or neglected children.

Section 1. That § 1-11-22 be amended to read as follows:

1-11-22. During any stage of a proceeding under chapter 26-8A, the court

may condition the placement or return of an apparent, alleged, or adjudicated abused or neglected child on participation in the 24/7 sobriety program and payment of associated costs and expenses.

Section 2. That chapter 26-8A be amended by adding thereto a NEW SECTION to read as follows:

If the court finds the apparent, alleged, or adjudicated abuse or neglect of a child was related to the use of alcohol, marijuana, or any controlled drug or substance, the placement or return of the child may be subject to the condition, if the court so orders, that a parent, guardian, custodian, or any other adult residing in the home submit to tests for alcohol, marijuana, or any controlled drug or substance prior to or during the placement or return of the child. If a parent, guardian, custodian, or any other adult, who resides in the home and has been ordered by the court to submit to testing for alcohol, marijuana, or any controlled drug or substance, tests positive for alcohol, marijuana, or any controlled drug or substance, or fails to submit to the test as required, the Department of Social Services may immediately remove the child from the physical custody of the parent, guardian, or custodian, without prior court order, subject to a review hearing, which may be telephonic, within forty-eight hours excluding Saturdays, Sundays, and court holidays. As used in this section, any controlled drug or substance means a controlled drug or substance which was not lawfully prescribed by a practitioner as authorized by chapters 22-42 and 34-20B.

HB 1238, An Act to revise the limitation period for commencing child abuse prosecutions.

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

26-10-1. Any person who abuses, exposes, tortures, torments, or cruelly punishes a minor in a manner which does not constitute aggravated assault, is guilty of a Class 4 felony. If the victim is less than seven years of age, the person is guilty of a Class 3 felony. The use of reasonable force, as provided in § 22-18-5, is a defense to an offense under this section. Notwithstanding § 23A-42-2, a charge brought pursuant to this section may be commenced at any time before the victim becomes age twenty-five.

If any person convicted of this offense is the minor's parent, guardian, or custodian, the court shall include as part of the sentence, or conditions required as part of suspended execution or imposition of such sentence, that the person receive instruction on parenting approved or provided by the Department of Social Services.

HB 1239, An Act to permit persons convicted of driving under the influence to operate a vehicle for 24/7 sobriety testing and to declare an emergency.

Section 1. That § 32-23-2 be amended to read as follows:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, 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, or attendance at counseling programs. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Section 2. That § 32-23-3 be amended to read as follows:

32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year. However, 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, or attendance at counseling programs. If such person is convicted of driving without a license during that period, 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 to read as follows:

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 order that the driver's license of any person so convicted be revoked 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 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, he 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 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, or attendance at counseling programs.

Section 4. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall order

that the driver's license of any person so convicted be revoked 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. In the event 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 person shall be sentenced 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 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, or attendance at counseling programs.

Section 5. That § 32-23-4.7 be amended to read as follows:

32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall order that the driver's license of any person so convicted be revoked 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 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 person shall be sentenced 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 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, or attendance at counseling programs.

Section 6. 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.

HB 1271, An Act to abolish the doctrine of abatement ab initio of a criminal proceeding and to provide for the posthumous sentencing of certain criminal defendants.

Section 1. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

Upon the death of a defendant who has not been sentenced but who has entered a plea of guilty or nolo contendere or has been found guilty at trial, the court shall enter a judgment of conviction pursuant to § 23A-27-4. Any sentence imposed shall be limited to restitution, court costs, and costs of prosecution.

Section 2. That chapter 23A-27 be amended by adding thereto a NEW SECTION to read as follows:

If a defendant dies following the entry of a plea of guilty or nolo contendere or a finding of guilt at trial and the time for taking an appeal has not expired, the court may order substitution of the proper parties for the purpose of an appeal. The personal representative of the defendant's estate may make a motion for substitution, together with a notice of hearing, and shall serve the same on the prosecuting attorney.

Section 3. That chapter 23A-32 be amended by adding thereto a NEW SECTION to read as follows:

The personal representative of a deceased defendant's estate, if substituted as a party pursuant to chapter 23A-27, may commence an appeal on behalf of the defendant subject to the time limits of § 23A-32-15.

Section 4. That chapter 23A-32 be amended by adding thereto a NEW SECTION to read as follows:

The personal representative of a deceased defendant, if substituted as a party, may continue a pending appeal on behalf of the deceased defendant to the extent that the claim is not extinguished by the death. The personal representative of the defendant's estate may make a motion for substitution, together with a notice of hearing, and shall serve the same on the prosecuting attorney and the attorney general within sixty days of the defendant's death. The court may dismiss any appeal of a deceased defendant in which a motion for substitution, together with notice of hearing and proof of service has not been filed with the clerk of the Supreme Court within sixty days of the defendant's death.

PENALTY BILLS

SB 12, An Act to update certain provisions pertaining to motor carrier safety and transportation of hazardous materials.

Section 1. That § 49-28A-3 be amended to read as follows:

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, 2008, and Title 49 of the Code of Federal Regulations, subtitle B, chapter III, subchapter B, parts 390 to 397, inclusive, as amended through January 1, 2008, with the following modifications:

(1) All references to interstate operations shall also include intrastate operations except that drivers and motor carriers operating intrastate vehicles and combinations of vehicles with three axles or less or with a gross vehicle weight rating of not more than twenty-six thousand pounds which 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;

(2) For the purposes of part 391.11(b)(1), a driver shall 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 shall be at least sixteen years of age;

(3) Intrastate drivers are exempt from the physical requirements of part 391.41.

Any violation of 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.

SB 13, An Act to revise certain provisions regarding the suspension of a minor's driving privileges.

Section 1. That § 32-12-15 be amended to read as follows:

32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The Department of Public Safety upon the receipt of a record of conviction for a traffic violation or for a violation of the restrictions in §§ 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13, or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend the minor's driving privileges according to the following schedule:

- (1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's sixteenth birthday or as otherwise required by law;
- (2) A first Class 2 misdemeanor traffic conviction or a comparable conviction of any moving traffic violation of a county or municipal ordinance--suspension for thirty days or as otherwise required by law;
- (3) A first conviction of a violation of the conditions of an instruction permit, a motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit-- suspension for thirty days or as otherwise required by law;
- (4) A second Class 2 misdemeanor traffic conviction or a comparable conviction of any moving traffic violation of a county or municipal ordinance--suspension until the minor's sixteenth birthday or for ninety days, whichever

period is longer, or as otherwise required by law; and

(5) A second conviction of a violation of the conditions of an instruction permit, a motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit-- suspension until the minor's sixteenth birthday or for ninety days, whichever period is longer, or as otherwise required by law.

No permit may be suspended for a first violation of §§ 32-14-9.1, 32-21-27, 32-25-5, 32-26-20, or 34A-7-7.

If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege or privilege to apply for a driver license as provided in this section. A conviction for any traffic violation that occurs prior to the issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license or an operator's license shall be placed on the driving record and given the same consideration as any violation that occurs following the issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license, or an operator's license.

SB 31, An Act to provide for certification of chiropractic assistants.

Section 1. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this chapter, the term, chiropractic assistant, means a properly qualified person who has completed an educational training program approved by the board, who assists in basic health care duties in the practice of chiropractic under the supervision of a doctor of chiropractic, and who performs delegated duties commensurate with the chiropractic assistant's education and training, but who does not evaluate, interpret, design, or modify established treatment programs of chiropractic care or violate any statute.

Section 2. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

A chiropractic assistant seeking a certification of registration under this chapter shall complete and submit an application as prescribed by the Board of Chiropractic Examiners. The board may promulgate rules pursuant to chapter 1-26 to establish an annual registration fee, not to exceed one hundred dollars, from those persons registered as chiropractic assistants.

Section 3. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

The Board of Chiropractic Examiners may promulgate rules pursuant to chapter 1-26 to establish minimum educational and training requirements and continuing education requirements to practice as a chiropractic assistant. The

board may also require, or substitute, clinical experience in addition to, or in lieu of, educational and training requirements.

Section 4. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

The Board of Chiropractic Examiners may register an applicant from outside the state whose education and training meet the qualifications established by the board.

Section 5. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

The Board of Chiropractic Examiners may provide by rules promulgated pursuant to chapter 1- 26, additional requirements for obtaining a chiropractic assistant certificate of registration.

Section 6. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

The registration of a chiropractic assistant may be revoked or suspended upon violation of any section of this chapter or of any rule adopted by the Board of Chiropractic Examiners. All proceedings concerning the revocation or suspension of a registration shall conform to contested case procedure set forth in chapter 1-26.

Section 7. That chapter 36-5 be amended by adding thereto a NEW SECTION to read as follows:

Any person who practices or attempts to practice as a chiropractic assistant

without first having secured a certificate of registration from the Board of Chiropractic Examiners and an annual renewal is guilty of a Class 1 misdemeanor.

SB 65, An Act to define intentional exposure to HIV infection by sexual intercourse as a sex crime subject to registry as a sex offender.

Section 1. That § 22-24B-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

Intentional exposure to HIV infection as set forth in subdivision (1) of § 22-18-31.

SB 100, An Act to revise the definition of certain public entities that are prohibited from making political campaign contributions.

Section 1. That § 12-27-21 be amended to read as follows:

12-27-21. No candidate, political committee, or political party may accept any contribution from any state, state agency, political subdivision of the state, foreign government, Indian tribal entity as defined in the Federal Register Vol. 72, No. 55 as of March 22, 2007, federal agency, or the federal government. A violation of this section is a Class 1 misdemeanor.

SB 111, An Act to extend the prohibition of road hunting of big game to include hunting using certain additional weapons.

Section 1. That § 41-9-1.2 be amended to read as follows:

41-9-1.2. No person may hunt big game on interstate highways or controlled access facilities as defined in § 31-8-1 within this state.

No person may discharge a firearm, muzzleloader, crossbow, or bow and arrow at any big game animal, except turkey to be taken with a shotgun using shot shells or with a bow and arrow, from within the right-of-way of an improved public highway. However, any person who possesses a disabled hunter permit issued by the department to shoot from a vehicle as provided in § 41-8-37 may hunt on public rights-of-way adjoining publicly-owned hunting areas and on rights-of-way adjoining private lands with the written permission of the owner or lessee.

Retrieval of lawfully taken big game is permitted on all public rights-of-way.

A violation of this section is a Class 2 misdemeanor.

SB 123, An Act to provide for certain requirements for the sale and purchase of nonferrous metal property.

Section 1. Terms used in this Act mean:

(1) "Industrial or commercial account," any person or business, including a scrap metal business, operating from a fixed location, that sells nonferrous metal to a scrap metal recycler pursuant to a contractual arrangement or agreement;

(2) "Law enforcement officer," any law enforcement officer as defined in

§ 23-3-7;

(3) "Nonferrous metal property," any metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, platinum, rhodium, palladium, or nickel, or any of their alloys. Aluminum does not include any food or beverage containers, except for a beer keg;

(4) "Record," a paper, electronic, or other method of storing information;

(5) "Scrap metal business," any scrap metal supplier, scrap metal recycling center, or scrap metal processor;

(6) "Transaction," a pledge to buy, the purchase of, or the trade for any nonferrous metal property by a scrap metal business from any person. A transaction does not include a sale or trade involving any industrial or commercial account.

Section 2. Each scrap metal business shall keep records of each transaction involving the purchase of nonferrous metal property that exceeds one hundred dollars. The scrap metal business shall be able to produce an accurate and legible record of each transaction involving nonferrous metal property at the location where the scrap metal is purchased. The records shall contain the following information:

(1) Date, location, and value of the transaction;

(2) Signature of the person selling the nonferrous metal property;

(3) Name, street address, city, and state of the seller;

(4) Current drivers license number or other government issued picture identification card number of the seller or, if no number is available, a copy of the seller's government issued picture identification card;

(5) A description of the predominant types of nonferrous metal property involved in the transaction, including the weight, quantity, or volume of the scrap nonferrous metal; and

(6) Name of the employee representing the scrap metal business in the transaction.

Section 3. The record required by this Act shall be open to the inspection of any law enforcement officer at all times during the ordinary hours of business or at reasonable times if ordinary hours of business are not kept. The record shall be maintained at the location that the business is conducted for one year following the date of the transaction.

Section 4. If a copy of the record of the transaction is requested by a law enforcement officer, a scrap metal business shall furnish a full, true, and correct transcript of the record from the purchase or receipt of the nonferrous metal property. This record shall be provided or transmitted to the applicable law enforcement agency within two business days.

If the scrap metal business has good cause to believe that any nonferrous metal property in the business's possession is lost or stolen, the scrap metal business shall promptly report that fact to a law enforcement officer, together with the name of the owner, if known, and the date of transaction and the name

of the person from whom it was received.

Section 5. If the scrap metal business is notified by a law enforcement officer that an item of nonferrous metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification on the property. The scrap metal business shall hold the property for a period of time as directed by the law enforcement agency up to a maximum of ten business days.

A law enforcement officer may not place on hold any item of nonferrous metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the nonferrous metal property shall be removed within ten business days. If the property on hold is determined not to be lost or stolen, the nonferrous metal property shall be returned to the owner or released.

SB 156, An Act to revise certain provisions regarding special motor vehicle license plates for veterans with a disability, prisoners of war, Pearl Harbor survivors, and Purple Heart recipients.

Section 1. That § 32-5-108 be amended to read as follows:

32-5-108. Any resident veteran owner of a motor vehicle who has received the United States Veterans' Administration K Award, meets the qualifications established by Public Law 187 of the Eighty-second Congress for a veteran to

receive an automobile, or a veteran who has been rated as in receipt of a statutory benefit for loss or loss of use of one or more extremities, or a veteran who receives a veteran's allotment for total disability under compensation which is considered a service- connected injury, upon application to the department shall receive a maximum of two sets of special license plates for any automobile, pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9. The veteran may choose to use one of the two sets of plates on a noncommercial motor vehicle that is a pickup truck and that weighs more than six thousand pounds licensed pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the special plates and renewal stickers. The special plates shall be displayed as set forth in § 32-5-98. The design of the license plate shall 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 be inscribed on the plate in blue, in at least ten point bold type. The license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. License fees for the special plates shall be ten dollars for the plates and the renewal stickers. No license fee or sticker fee pursuant to § 32-5-6 or 32-5-9 may be charged to the veteran. The fees shall be deposited in the license plate special revenue fund.

In order to qualify for a special license plate pursuant to this section, a veteran shall, in addition to meeting the qualifications established in the first paragraph, have incurred disabling injuries while serving the United States in active duty during a time of war or while participating in a military mission involving armed conflict. If it is determined that the veteran owner does not qualify for the special plates or if the veteran owner dies, the plates shall be surrendered to the county treasurer of applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. Failure to surrender the special license plates as required by this section is a Class 2 misdemeanor.

Section 2. That § 32-5-109 be amended to read as follows:

32-5-109. Any resident of this state who was a prisoner of war while serving in the United States armed forces and who received an honorable discharge from the United States armed forces is eligible to apply to the secretary for a maximum of two sets special motor vehicle license plates if the resident has first complied with all laws of this state for any automobile, pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9. The veteran may choose to use one of the two sets of plates on a noncommercial motor vehicle that is a pickup truck and that weighs more than six thousand pounds licensed pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the special plates and renewal stickers. Each application shall be on a form prescribed by the secretary and shall

include certification of the applicant's prisoner of war status from the United States Veterans' Administration. The applicant shall pay a ten dollar fee and shall receive special plates. The special plates shall be displayed as set forth in § 32-5-98. A fee of ten dollars shall be paid for the renewal stickers. No registration fee or sticker fee may be charged to the applicant pursuant to § 32-5-6 or 32-5-9. The fees shall be deposited into the license plate special revenue fund. Upon approval of the application, the secretary shall issue the license plates which shall be numbered consecutively, beginning with the number 1, and the number shall be preceded by the letters POW. If it is determined that an applicant does not qualify for the special plates or if the applicant dies, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. Failure to surrender the special license plates as required by this section is a Class 2 misdemeanor.

Section 3. That § 32-5-109.1 be amended to read as follows:

32-5-109.1. Any resident of this state who was serving in the United States armed forces and survived the attack at Pearl Harbor, Hawaii, on December 7, 1941, and who received an honorable discharge, may apply to the secretary for a maximum of two sets of special motor vehicle license plates if the applicant has complied with all the laws of this state for any automobile, pickup truck, or van licensed pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9. The veteran may choose to use one of the two sets of plates on a noncommercial

motor vehicle that is a pickup truck and that weighs more than six thousand pounds licensed pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the special plates and renewal stickers. Each application shall be on a form prescribed by the secretary and shall include such information as the secretary may require. The applicant shall pay a ten dollar fee and shall receive special plates. The special plates shall be displayed as set forth in § 32-5-98. A fee of ten dollars shall be paid for the renewal stickers. No registration fee or sticker fee may be charged to the applicant pursuant to § 32-5-6 or 32-5-9. The fee shall be deposited into the license plate special revenue fund. Upon approval of the application, the secretary shall issue the license plates. The license plates shall be numbered consecutively beginning with number 1 and contain a symbol to be determined by the secretary indicating that the owner of the vehicle is a Pearl Harbor survivor. If it is determined that an applicant does not qualify for the special plates or if the applicant dies, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file.

Section 4. That § 32-5-109.2 be amended to read as follows:

32-5-109.2. Any resident veteran owner of a motor vehicle who has received the Purple Heart Medal may apply to the secretary to receive a maximum of two sets of special license plates for any automobile, pickup truck, or van licensed

pursuant to § 32-5-5 or a motorcycle licensed pursuant to § 32-5-9. The veteran may choose to use one of the two sets of plates on a noncommercial motor vehicle that is a pickup truck and that weighs more than six thousand pounds licensed pursuant to § 32-5-6.3 or a motor home licensed pursuant to § 32-5-6.1. The veteran shall pay the regular license fees set out in §§ 32-5-6.3 and 32-5-6.1 and may not be required to pay the ten dollars for the special plates and renewal stickers. The fee for the special license plates and the renewal stickers shall be ten dollars. The special plates shall be numbered consecutively beginning with number 1 and contain a symbol to be determined by the secretary indicating that the owner has received the Purple Heart Medal. The special plates shall be displayed as set forth in § 32-5-98. The special license plate shall be reflectorized and validated each year with a sticker in the same manner as a noncommercial license plate. No license fees or renewal fees may be charged to the applicant pursuant to § 32-5-6 or 32-5-9. If it is determined that the veteran owner does not qualify for the special plates or if the veteran owner dies, the plates shall be surrendered to the county treasurer of the applicant's residence. The treasurer shall notify the secretary who shall make the necessary changes in the registration file. Failure to surrender the special license plates as required by this section is a Class 2 misdemeanor.

HB 1026, An Act to revise certain provisions and procedures concerning elections.

Section 1. That § 6-8B-4 be amended to read as follows:

6-8B-4. The governing body shall publish notice of the election once each week for two consecutive weeks in all official newspapers designated by the public body or if there is no official newspaper, a newspaper of general circulation serving the public body. The second notice shall be published not less than four nor more than ten days before the election.

The notice shall state the maximum amount of bonds to be issued, the purpose for which bonds are to be issued, and other matters the governing body determines to be necessary.

Section 2. That § 9-10-6 be amended to read as follows:

9-10-6. Within sixty days after an election directing the employment of a manager in any commission-governed municipality, a special election shall be called and held to elect the nine commissioners. A plurality vote in the election of commissioners is sufficient to elect the commissioners.

The commissioners shall qualify as provided by law and organize by electing a commissioner to act as mayor until the first regular meeting of the board in the month following the first annual election of commissioners. At the first regular meeting in the month following the annual election, the commissioners shall elect a commissioner to act as mayor for a term of one year.

The board has the same powers conferred upon the board of commissioners in

a commission-governed municipality pursuant to chapter 9-9. Except as otherwise provided in this chapter, the board shall be governed by the provisions of the law relating to a commission-governed municipality.

Section 3. That § 9-11-8 be amended to read as follows:

9-11-8. The question of changing the form of government may not be voted upon again within one year after the election held pursuant to § 9-11-6.

Section 4. That § 9-13-21 be amended to read as follows:

9-13-21. The finance officer shall prepare and furnish, at the expense of the municipality, all official ballots. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. The ballots shall be white in color, of good quality of print paper, printed in black ink, and in the English language only.

The ballots for municipal elections shall be available for absentee voting no later than fifteen days prior to election day. If the ballots are for a secondary election, the ballots shall be available no later than seven days prior to the secondary election day.

The names of the candidates for each office to be voted for in the precinct shall be arranged without any other designation than that of the office for which they are candidates. If more than one member of the governing body is to be elected, the ballot shall contain instructions as to how many candidates for the governing body are to be voted for. The finance officer shall determine, by lot, each candidate's position on the ballot. Each candidate may be present or represented

when the position on the ballot is being determined.

No candidate's name may be printed upon the official ballot unless the candidate has been nominated as provided in this chapter.

Section 5. That § 9-13-28 be amended to read as follows:

9-13-28. The finance officer, within two days after the result of the election is declared, shall notify each person elected to office of the person's election. If a person does not qualify within ten days after the first meeting of the month next succeeding the election, the office shall become vacant.

Section 6. That chapter 12-1 be amended by adding thereto a NEW SECTION to read as follows:

If any state court finds that a declaration of candidacy on a nominating petition is not valid, the candidacy shall be invalidated as of the date of filing. If the invalidation creates a vacancy which continues to exist after a primary election, the vacancy may be filled as provided in §§ 12-6-56 and 12-6-57.

Section 7. That § 12-1-7.1 be repealed.

Section 8. That § 12-6-51.1 be amended to read as follows:

12-6-51.1. If no candidate for United States Senate, United States House of Representatives, or Governor in a race involving three or more candidates receives thirty-five percent of the votes of the candidate's party, a secondary election shall be held three weeks from the date of the first primary election. At the secondary election the only persons voted for shall be the two candidates receiving the highest number of votes at the first election. However, if there is a

tie for second place in the first primary election and there is no tie for first place, all tying second place candidates shall be placed along with the first place candidate on the ballot for the secondary election. The secondary election shall be held at the same polling places, be conducted, returned, and canvassed and the results declared in the same manner as the first election. The person receiving the highest number of votes at the secondary election is nominated as the candidate for the party.

Section 9. That § 12-6-51.3 be amended to read as follows:

12-6-51.3. Within twenty-four hours after the completion of the canvass, the secretary of state shall certify runoff candidates, listed in the order determined by a drawing of names, to all county auditors.

Section 10. That § 12-6-51.4 be repealed.

Section 11. That § 12-14-12 be repealed.

Section 12. That § 12-17B-1 be amended to read as follows:

12-17B-1. Terms used in this chapter mean:

(1) "Automatic tabulating equipment," the apparatus necessary to automatically examine and count votes as designated on ballots or entered directly into a computer by means of a touch screen or other data entry device and data processing machines which can be used for counting these votes and tabulating results;

(2) "Ballot," paper ballots containing the names of candidates and statements of measures to be voted on;

(3) "Counting location," any location selected by the person in charge of the election for the counting of votes cast in an election. A counting location shall be within the territorial jurisdiction of such person unless there is no suitable tabulating equipment available within the jurisdiction. However, in any event, all counting locations shall be within this state;

(4) "Direct recording electronic," a voting system which records votes by means of a ballot display provided by electro-optical devices that can be actuated by the voter, that process the data by means of a computer program, and that records voting data in internal memory devices;

(5) "Electronic ballot marking system," any electronic device which marks votes on a ballot;

(6) "Optical scan," a procedure in which votes are tabulated by means of examining marks made in voting response locations on the ballots with an optical mark reader (OMR);

(7) "Resolution board," a board at an automatic tabulating location comprised of a representative from each political party having a candidate on the ballot and whose candidate on the county-wide ballot at the last general election received at least fifteen percent of the votes. The county auditor may request additional board members balanced evenly by party. If the resolution board consists of more than one member from each party, the party shall designate which member of the party shall serve as co-leader of the resolution board. The co-leaders shall ensure that each board member is conducting resolution board

duties uniformly and in accordance with applicable statutes and administrative rules. The board shall determine the disposition of those ballots which cannot be properly counted by the tabulating equipment and observe the activities at the counting location on behalf of the board member's respective party affiliation. In strictly nonpartisan elections, the resolution board shall be comprised of two persons who are not employees of the jurisdiction conducting the election and shall be appointed by the person in charge of the election.

Section 13. That § 12-17B-13.1 be amended to read as follows:

12-17B-13.1. If automatic tabulating equipment is located at a polling place for processing ballots while the polls are open, the equipment may not be operated in a manner which returns an over-voted or partially under-voted ballot to the voter. The equipment shall be operated in a manner which returns any ballot that appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot is returned to the voter, the voter may choose to remark the ballot, obtain a new ballot, or resubmit the ballot.

Any central count automatic tabulating equipment shall contain the capability to out-stack ballots and shall be operated in a manner to out-stack any ballot which appears to the tabulating equipment to be blank or has any possible mark which the tabulating equipment cannot determine. If the ballot contains any such mark, the resolution board shall examine the mark and make a determination of any individual vote according to the rules promulgated pursuant to chapter 1-26

by the state board of elections. The resolution board shall make a duplicate ballot as prescribed in § 12-17B-14 which shall be counted by the automatic tabulating equipment.

Section 14. That § 12-18-3 be amended to read as follows:

12-18-3. Except for sample ballots and materials and supplies necessary for the conduct of the election, no person may, in any polling place or within or on any building in which a polling place is located or within one hundred feet from any entrance leading into a polling place, maintain an office or public address system, or use any communication or photographic device in a manner which repeatedly distracts, interrupts, or intimidates any voter or election worker, or display campaign posters, signs, or other campaign materials or by any like means solicit any votes for or against any person or political party or position on a question submitted. No person may engage in any practice which interferes with the voter's free access to the polls or disrupts the administration of the polling place, or conduct, on the day of an election, any exit poll or public opinion poll with voters within one hundred feet of a polling place. A violation of this section is a Class 2 misdemeanor.

Section 15. That § 12-18-9.1 be amended to read as follows:

12-18-9.1. The superintendent of elections may order poll watchers and voters waiting to vote to position themselves where the poll watchers and voters cannot see into voting booths, read identifying numbers on photo identification cards, or interfere with voters in the act of voting or with the official actions of

the election board. A violation of such an order is a Class 2 misdemeanor.

Section 16. That § 12-18-12 be amended to read as follows:

12-18-12. Before delivering a ballot to any voter the member of the precinct election board in charge of the ballots shall stamp on the ballot the official stamp provided for that purpose as follows:

(1) On a hand-counted ballot, on the back and near the top of the ballot;
and

(2) On an optical scan ballot, the location indicated by the person in charge of the election.

Section 17. That § 12-21-2 be amended to read as follows:

12-21-2. The county recount board of each county which conducts a recount authorized by this chapter shall consist of a recount referee and two voters of the county to be appointed by the presiding judge of the circuit court for that county, and shall provide for representation of the two political parties with the largest party registration in that county. The recount referee shall be a duly qualified member of the bar of the State of South Dakota and a member of the political party which polled the largest number of votes for Governor in the county in the last gubernatorial election. Prior to serving, each member of the recount board shall take an oath that the member will act in good faith and with impartiality. The state board of elections shall prescribe the oath to be taken.

Section 18. That § 12-21-32 be amended to read as follows:

12-21-32. Upon the conclusion of the recount of all ballots to be recounted the

county recount board shall certify the result. The certificate shall be signed by at least two members of the board, attested under seal by the county auditor. The certificate shall set forth in substance the proceedings of the board and appearances of any candidates or representatives, shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made as to the office, nomination, position, or question involved, and the correct vote of such precinct as to the office, nomination, position, or question as determined by the board through the recount. The certificate shall be made in duplicate, and either the original or duplicate original shall be transmitted to the secretary of state by mail in any recount affecting a certificate to be issued by the secretary of state.

Section 19. That § 13-7-13 be amended to read as follows:

13-7-13. The business manager of the school district shall provide proper ballots, pollbooks, voting booths, and necessary supplies as required by law to the proper election officials on election day. The ballots shall be similar in form to those authorized by law for municipal elections. The quantity of ballots provided shall be at least ten percent more than the number of voters at the last comparable election. No party affiliation may appear on the ballot and the names of the candidates for the respective vacancies shall be printed on the ballot. Each candidate's position on the ballot shall be chosen by lot by the business manager and each candidate may be present or represented when the position on the

ballot is being determined. The ballots for school elections shall be available for absentee voting no later than fifteen days prior to election day.

HB 1042, An Act to revise certain provisions pertaining to the definition of residency and the issuance of resident hunting, fishing, and trapping licenses.

Section 1. That § 41-1-1 be amended by adding thereto a NEW SUBDIVISION to read as follows:

"Domicile," a person's established, fixed, and permanent home to which the person, whenever absent, has the present intention of returning;

Section 2. That subdivision (22) of § 41-1-1 be amended to read as follows:

(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 section 3 of this Act, 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;

Section 3. That chapter 41-1 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this title, the following are deemed to be residents of this

state:

(1) Any person who previously had a domicile in this state who is absent due to business of the United States or of this state, or is serving in the armed forces of the United States or the spouse of an active duty military person;

(2) Any person who previously had a domicile in this state who is absent due to the person's regular attendance at a post-high school institution as a full-time student;

(3) Any person in the active military of the United States or that person's spouse who is continuously stationed in this state;

(4) Any person who is a patient in any war veterans' hospital within this state;

(5) Any person who is an employee of the veterans' administration or any veterans' hospital in this state;

(6) Any person residing on restricted military reservations in this state;

(7) Any person attending regularly a post-high school institution in this state as a full-time student for thirty days or more immediately preceding the application;

(8) Any foreign exchange student over sixteen years of age attending a public or private high school who has resided in the state for thirty days or more preceding the application;

(9) Any foreign exchange student who is between the ages of twelve years and sixteen years who has completed the Department of Game, Fish and

Parks' course of instruction in the safe handling of firearms and has been issued a certificate of competency upon completion of instruction and who has resided in the state for thirty days or more preceding application for a license;

(10) Any person who is a minor dependent of a resident of this state;
and

(11) For the purpose of acquiring resident small game and fishing licenses, any person who does not reside in South Dakota but who is a member of the South Dakota National Guard or of any other unit of a reserve component of the armed forces of the United States that is located in South Dakota.

Section 4. That chapter 41-1 be amended by adding thereto a NEW SECTION to read as follows:

Except for a person who continues to qualify for resident privileges as provided in section 3 of this Act, 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. 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.

Section 5. That § 41-6-52 be amended to read as follows:

41-6-52. No person other than a resident as defined in this title may make application for, purchase, or attempt to purchase a resident license under §§ 41-6-12 to 41-6-45.1, inclusive. A violation of this section is a Class 2 misdemeanor.

Section 6. That § 41-6-16.2 be amended to read as follows:

41-6-16.2. Any resident who is on active duty in the armed forces of the United States and who is stationed at a location outside the state may fish and hunt small game without payment of a fee or the applicable hunting and fishing license authorizing the activity. However, if the resident is hunting migratory birds, the resident shall obtain a migratory bird certification permit and federal migratory bird stamp. While engaged in the permitted activity, the resident shall possess and display appropriate military orders indicating the resident is on active duty stationed outside of South Dakota and a valid military identification card. This section does not apply to any person who is serving on active duty for training as a member of the armed forces reserve or national guard.

HB 1055, An Act to revise the penalty for leaving the brand inspection area without a brand inspection.

Section 1. That § 40-20-4 be amended to read as follows:

40-20-4. Except as provided in this chapter, it is a 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 inspection certificate, market clearance, shippers permit, or such other form of authorization as may be required by the board. Except as provided in § 40-20-29, a local inspection certificate is valid for transportation of livestock out of the inspection area only on the date issued. If there is no valid local inspection certificate, the livestock shall be inspected before leaving the 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 of any offense under this section is in the county where such 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 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.

HB 1061, An Act to revise the penalty for the distribution or possession with intent to distribute marijuana to a minor.

Section 1. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana is a Class 6 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana is a Class 5 felony. The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana is a Class 3 felony. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana to a minor without consideration is a Class 6 felony; otherwise, the distribution, or possession with intent to distribute, of one ounce or less of marijuana to a minor is a Class 5 felony. The distribution, or possession with intent to distribute, of more than one ounce but less than one-half pound of marijuana to a minor is a Class 4 felony.

The distribution, or possession with intent to distribute, of one-half pound but less than one pound of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of one pound or more of marijuana to a minor is a Class 2 felony. A first conviction of a felony under this section shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. A second or subsequent conviction of a felony under this section shall be punished by a mandatory sentence of at least one year. Conviction of a Class 1 misdemeanor under this section shall be punished by a mandatory sentence in county jail of not less than fifteen days, which sentence may not be suspended. A civil penalty, not to exceed ten thousand dollars, may be imposed, in addition to any criminal penalty, upon a conviction of a felony violation of this section.

HB 1064, An Act to revise the crime of aggravated incest.

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

22-22A-3. Any person who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and is either:

- (1) The child of the perpetrator or the child of a spouse or former spouse of the perpetrator; or
- (2) Related to the perpetrator within degrees of consanguinity within which marriages are, by the laws of this state, declared void pursuant to § 25-1-6; is guilty of aggravated incest. Aggravated incest is a Class 3 felony.

Section 2. That chapter 22-22A be amended by adding thereto a NEW SECTION to read as follows:

Any person eighteen years of age or older, who knowingly engages in an act of sexual penetration with a person who is less than eighteen years of age and who, at the time of the offense, has been placed, and resides, in a licensed foster home is guilty of aggravated incest if the perpetrator is:

- (1) The licensed foster care provider; or
- (2) A resident of the licensed foster care provider's home and related to the licensed foster care provider by blood or marriage.

Aggravated incest is a Class 3 felony.

HB 1075, An Act to require certain criminal record checks in adoption home studies for children in the custody of the Department of Social Services.

Section 1. That § 25-6-9.1 be amended to read as follows:

25-6-9.1. No person may place a child in a home for adoption until a home study has been completed by a licensed child placement agency as defined in § 26-6-14, the Department of Social Services, or a certified social worker eligible to engage in private independent practice as defined in § 36-26-17. Any person who submitted home studies under this section or under § 26-4-15 prior to July 1, 1990, may continue to submit home study reports without meeting the above requirements. A home study shall include a fingerprint based criminal record

check completed by the Division of Criminal Investigation and a central registry screening completed by the Department of Social Services. In addition, no child who is in the custody of the Department of Social Services may be placed in a home for adoption until a fingerprint based criminal record check has been completed by the Federal Bureau of Investigation for each adopting parent. Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor.

HB 1126, An Act to revise certain provisions regarding the issuance of on-sale wine licenses and the sale of wine.

Section 1. That § 35-4-2 be amended to read as follows:

35-4-2. Classes of licenses, with the fee of each class, follow:

(1) Distillers--four thousand dollars. However, no license fee is required for manufacturers of alcohol for use in industry as a nonbeverage. If such manufacturer of industrial alcohol shall at any time manufacture, produce, distill, sell, barter, or dispose of alcohol for any use other than an industrial use, the license fee required by this section shall be allocated to and payable for the portion of the year the manufacturer devoted to such other use for each calendar month or fraction thereof while so engaged, but in no case less than one-twelfth of said license fee;

(2) Wholesalers of alcoholic beverages--five thousand dollars;

(3) Off-sale--not less than five hundred dollars in municipalities of the

first class, not more than four hundred dollars in municipalities of the second class, and not more than three hundred dollars in municipalities of the third class. The renewal fee for such licenses may not exceed five hundred dollars in municipalities of the first class, four hundred dollars in municipalities of the second class, and three hundred dollars in municipalities of the third class;

(4) On-sale--in municipalities of various classes: municipalities of the first class, not less than one dollar for each person residing within the municipality as measured by the last preceding federal census, the renewal fee for such license is fifteen hundred dollars; municipalities of the second class, no more than twelve hundred dollars; municipalities of the third class, no more than nine hundred dollars;

(5) Off-sale licenses issued to municipalities under local option--not less than two hundred fifty dollars;

(6) On-sale licenses issued outside municipalities --except as provided in § 35-4-11.9, not less than the maximum that the municipality to which the applicant is nearest is charging for a like license in that municipality, the renewal fee shall be the same as is charged for a like license in the nearest municipality. However, if the nearest municipality is more than fifteen miles from the on-sale license, the fee shall be established pursuant to § 35-4- 11.10. If the municipality to which the applicant is nearest holds an on-sale license, pursuant to § 35-3-13 and does not charge a specified fee, then the fee shall be the maximum amount that could be charged as if the municipality had not been authorized to obtain

on-sale licenses pursuant to § 35-3-13. However, if the nearest municipality is a municipality of the first class and is authorized to hold an on-sale license pursuant to § 35-3-13, such fee may not be more than one hundred fifty percent of the minimum a municipality not so authorized may charge for a like license. The renewal fee shall be the same as could be charged for a like license in the nearest municipality;

(7) Solicitors--twenty-five dollars;

(8) Transportation companies--twenty-five dollars;

(9) Carrier--one hundred dollars, which fee entitles the licensee to sell or serve alcoholic beverages on all conveyances the licensee operates within the state;

(10) Dispensers--ten dollars;

(11) On-sale dealers at publicly operated airports--two hundred fifty dollars;

(12) Wine retailers, being both package dealers and on-sale dealers--five hundred dollars;

(13) Convention facility on-sale--not less than one dollar for each person residing within the municipality as measured by the last preceding federal census, the renewal fee for such license, in municipalities of the first class, is fifteen hundred dollars; the renewal fee for such license, in municipalities of the second class, is no more than twelve hundred dollars; the renewal fee for such license, in municipalities of the third class, is no more than nine hundred

dollars;

(14) Manufacturers of malt beverages--five hundred dollars;

(15) Wholesalers of malt beverages--four hundred dollars;

(16) Malt beverage retailers, being both package dealers and on-sale dealers--two hundred fifty dollars;

(17) Malt beverage package dealers--one hundred fifty dollars;

(18) On-sale dealers in light wine containing not more than six percent alcohol by weight for each day of the week between the hours of seven a.m. and two a.m. to nonprofit corporations established pursuant to chapter 7-27--two hundred dollars; and

(19) Off-sale package wine dealers in table wines, sparkling wines, sacramental wine, and distilled spirits produced from product provided to an artisan distiller by the respective farm winery to be operated in conjunction with a farm winery established pursuant to chapter 35-2--one hundred fifty dollars.

Section 2. That § 35-4-2.2 be repealed.

Section 3. That § 35-4-2.8 be amended to read as follows:

35-4-2.8. An on-sale licensee, licensed under subdivision 35-4-2(4) or (6), may also be licensed under subdivision 35-4-2(12) or (16), or both. A licensee holding two or more licenses pursuant to this section may exercise the privileges granted under the license issued pursuant to subdivision 35- 4-2(12) or subdivision 35-4-2(16) during the time specified in § 35-4-81.2.

Section 4. That § 35-4-81.2 be amended to read as follows:

35-4-81.2. No licensee licensed under subdivisions 35-4-2(16) and (17) may sell, serve, or allow to be consumed on the premises covered by the license, any malt beverage between the hours of two a.m. and seven a.m. No licensee licensed under subdivision 35-4-2(12) may sell, serve, or allow to be consumed on the premises covered by the license, any wine between the hours of two a.m. and seven a.m. A violation of this section is a Class 2 misdemeanor.

Section 5. That § 35-4-11.4 be amended to read as follows:

35-4-11.4. Any municipality or county may issue a special malt beverage retailers license and a special retail on-sale wine retailers license to any civic, charitable, educational, or fraternal organization in conjunction with a special event within the municipality or within the county. Educational does not include any elementary, secondary, or higher educational institution in the public school system of this state. Any license issued pursuant to this section may be issued for a period of time established by the municipal governing body or board of county commissioners. However, such period of time may not exceed fifteen consecutive days. If an organization receiving a license pursuant to this section conducts a street dance in conjunction with the special event, the organization shall provide qualified security personnel as deemed necessary by the governing body which issued the license to maintain order during the street dance.

Section 6. That § 35-4-104 be amended to read as follows:

35-4-104. Any municipality or county may issue a special malt beverage retailers license and a special retail on-sale wine retailers license to a community

playhouse operating as a nonprofit organization for use in conjunction with a theatrical production. Any license issued pursuant to this section may be issued for a period of time established by the municipal governing board or board of county commissioners up to a period of one year. However, such use may not exceed sixty days per year. The selling, serving, or dispensing of malt beverages and wine may not occur more than one hour before the commencement of a performance or at any time after the performance is concluded.

HB 1138, An Act to prohibit the use of a false academic degree or a degree that is not completed.

Section 1. No person may knowingly use a false academic degree or falsely claim to have a valid academic degree for the following purposes:

- (1) To obtain employment;
- (2) To obtain a promotion or higher compensation in employment;
- (3) To obtain admission to postsecondary education; or
- (4) In connection with any business, trade, profession, or occupation.

A violation of this section is a Class 1 misdemeanor.

For the purposes of this Act, a false academic degree is a degree document, a certification of completion of a degree, coursework, or degree credit, including a transcript, that provides evidence or demonstrates completion of a course of instruction or coursework that results in the attainment of an associate degree or higher which is issued by a person or entity that is neither currently accredited

by a regional, state, or national accrediting agency recognized by the United States Department of Education pursuant to 20 U.S.C. § 1099b as amended to January 1, 2008, nor has the foreign equivalent of such accreditation or the legal authority from a foreign country to issue degrees usable as educational credentials in the jurisdiction of issue.

The provisions of this section do not apply to any documents issued by a religious institution that offers credit or degree solely for the purpose of conferring status or authority within that religion.

Section 2. No person, for the following purposes, may knowingly use any false degree, certificate, diploma, transcript, or other document indicating that the person has completed an organized program of study or completed courses when the person has not completed the organized program of study or the courses indicated on the degree, certificate, diploma, transcript, or document or falsely claim to have any valid degree, certificate, diploma, transcript, or other such document:

- (1) To obtain employment;
- (2) To obtain a promotion or higher compensation in employment;
- (3) To obtain admission to postsecondary education; or
- (4) In connection with any business, trade, profession, or occupation.

A violation of this section is a Class 1 misdemeanor.

HB 1162, An Act to prohibit the branding of a minor and to provide a penalty therefor.

Section 1. That chapter 26-10 be amended by adding thereto a NEW SECTION to read as follows:

No person may brand a minor. For the purposes of this section, the term, brand, means to make a permanent mark on a person's skin through the use of heat, cold, or a chemical compound, or to cut, tear, or abrade the skin for the purpose of creating a permanent mark or design. It is not a violation of this Act to tattoo a minor in compliance with the provisions of § 26-10-19. It is not a violation of this Act to pierce any part of a minor's body for the purpose of jewelry or adornment with consent. A violation of this section is a Class 1 misdemeanor. However, any second or subsequent violation of this section is a Class 6 felony.

HB 1168, An Act to clarify the penalty applicable to violations of certain no contact orders.

Section 1. That § 25-10-13 be amended to read as follows:

25-10-13. If a temporary protection order or a protection order is granted pursuant to this chapter or a foreign protection order recognized pursuant to § 25-10-12.1, or if a no contact order is issued pursuant to § 25-10-25, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault

pursuant to § 22-18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within five years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition to other civil or criminal remedies.

HB 1170, An Act to allow pneumatic tires with retractable studs to be used upon highways year round.

Section 1. That chapter 32-19 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of § 32-19-3, any motor vehicle with pneumatic tires that features an embedded block, stud, flange, cleat, spike, or other protuberance that is retractable may be used at any time of the year upon the highways of this state. However, no such block, stud, flange, cleat, spike, or other protuberance may be engaged or extended from May first to September thirtieth, inclusive. A violation of this section is a Class 2 misdemeanor.

HB 1198, An Act to revise the amount of a judgment in a petty offense case.

Section 1. That § 23-1A-22 be amended to read as follows:

23-1A-22. If the plaintiff prevails in a petty offense case, the plaintiff shall be granted a judgment of twenty-five dollars. However, the trial court may reduce or eliminate the award in the interest of justice. No award may be granted a defendant in a petty offense case. If a deposit is required by this chapter, it shall be the amount set by this section.

HB 1203, An Act to provide for the sale or consumption of alcoholic beverages upon property adjoining licensed premises.

Section 1. That chapter 35-4 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding the provisions of § 35-4-75, the governing body of the municipality charged with the approval of alcoholic beverage license issuance may, by ordinance, permit the sale and consumption of alcoholic beverages on a sidewalk or walkway subject to a public right-of-way abutting a licensed premises, provided that the license holder derives more than fifty percent of its gross receipts from the sale of prepared food for consumption on the licensed premises. The sidewalk or walkway subject to a public right-of-way shall be immediately adjacent to and abutting the licensed premises. This section does not apply to any federal-aid eligible highway unless approved in accordance with the applicable requirements for the receipt of federal aid.

Nothing contained in this section prevents the governing body from imposing conditions or restrictions that it deems appropriate.

The sidewalk or walkway subject to a public right-of-way where the sale and consumption of alcoholic beverages is permitted does not constitute a public place as defined in § 35-1-5.3, if the sidewalk or walkway subject to a public right-of-way has been properly authorized for sale and consumption of alcoholic beverages pursuant to this section. The hours of authorized sale and consumption on the sidewalk or walkway subject to a public right-of-way as provided by this section shall be consistent with the hours permitted for the on-sale license.

A violation of any provision of Title 35 by an alcoholic beverage license holder conducting business on a sidewalk or walkway subject to a public right-of-way pursuant to this section constitutes a violation of Title 35 as if the violation had occurred in or on the licensed premises.

HB 1210, An Act to prohibit recyclers, scrap metal dealers, or scrap yard operators from purchasing certain beer kegs.

Section 1. No recycler, scrap metal dealer, or scrap yard operator may purchase any metal beer keg, whether damaged or undamaged, except from the brewer or its authorized representative, if:

(1) The keg is clearly marked as the property of a brewery manufacturer; or

(2) The keg's identification markings have been made illegible.

A violation of this section is a Class 2 misdemeanor.

HB 1228, An Act to revise certain provisions related to bow hunting methods used by persons who are disabled or physically incapacitated.

Section 1. That § 41-8-31 be amended to read as follows:

41-8-31. No person may at any time hunt, catch, take, attempt to take, or kill any small game or game animal in any other manner than by shooting the same with a firearm, except:

(1) Game birds and animals may be taken with birds trained in falconry or with bow and arrow;

(2) A permanently or temporarily disabled person who is missing an upper limb, physically incapable of using an upper limb, or confined to a wheelchair may obtain a disabled hunter permit to use a crossbow or other legal bow equipped with a draw-lock device to take game birds and animals; and

(3) A legally blind person, who is legally licensed, possesses a disabled hunter permit, and is physically present and participates in the hunt but cannot safely discharge a firearm or bow and arrow, may claim game birds and animals taken by a designated hunter in accordance with the license possessed by the legally blind hunter.

A violation of this section is a Class 2 misdemeanor.

HB 1260, An Act to revise sex offender registry provisions for persons without a residence address.

Section 1. That § 22-24B-12 be amended to read as follows:

22-24B-12. Any person required to register pursuant to §§ 22-24B-1 to 22-24B-14, inclusive, who moves to a different location or residence address shall inform the law enforcement agency with whom the person last registered of the new location or address, in writing, within five days. The law enforcement agency shall, within three days of receipt, forward the information to the Division of Criminal Investigation and to the law enforcement agency having jurisdiction of the new location or residence. A failure to register pursuant to this section is a Class 6 felony.

HB 1265, An Act to prohibit the sale, purchase, use, or possession of alcohol without liquid devices.

Section 1. No person may sell, offer to sell, purchase, possess, or use an alcohol without liquid device. For the purposes of this section, the term, alcohol without liquid device, means an apparatus that is advertised, designed, or used to vaporize an alcoholic beverage to produce a vapor that may be inhaled by an individual. The term does not include an inhaler, nebulizer, atomizer, or other device that is designed and intended specifically for medical purposes to dispense prescribed or over-the-counter medications or water.

This section does not apply to a hospital that operates primarily for the

purpose of conducting scientific research, a state institution conducting bona fide research, a private college or university conducting bona fide research, or a pharmaceutical company or biotechnology company conducting bona fide research.

A violation of this section is a Class 1 misdemeanor.

HB 1313, An Act to prohibit the use of certain electronic communication devices to communicate threats and harassment and to provide a penalty therefor.

Section 1. That § 49-31-31 be amended to read as follows:

49-31-31. It is a Class 1 misdemeanor for a person to use a telephone or other electronic communication device for any of the following purposes:

(1) To contact another person with intent to terrorize, intimidate, threaten, harass or annoy such person by using obscene or lewd language or by suggesting a lewd or lascivious act;

(2) To contact another person with intent to threaten to inflict physical harm or injury to any person or property;

(3) To contact another person with intent to extort money or other things of value;

(4) To contact another person with intent to disturb that person by repeated anonymous telephone calls or intentionally failing to replace the receiver or disengage the telephone connection.

It is a Class 1 misdemeanor for a person to knowingly permit a telephone or other electronic communication device under his or her control to be used for a purpose prohibited by this section.

TRACKED LEGISLATION THAT FAILED

- SB 20 An Act to repeal certain provisions regarding personalized motor vehicle license plates.
- SB 61 An Act to increase the tax on alcoholic beverages, to dedicate the revenue from such tax increase, to create the South Dakota Teen Court Commission, and to create the South Dakota Commission on Equal Access to Our Courts.
- SB 70 An Act to exempt the operators of certain older motorcycles from the special qualification required to operate a motorcycle.
- SB 81 An Act to allow persons to place a security freeze on their credit reports without first being victims of identity theft.
- SB 86 An Act to prohibit and establish a penalty for hazing.
- SB 90 An Act to provide for voluntary limitations on campaign spending for legislative office.
- SB 94 An Act to repeal certain provisions relating to the right to work upon the contingency of repealing the right to work provisions of the Constitution.
- SB 104 An Act to excuse certain elderly persons from jury duty upon request.
- SB 105 An Act to provide state comity for the orders and judgments of tribal courts.
- SB 119 An Act to prohibit insurers or adjusters from knowingly underestimating the value of an insurance claim and to establish a penalty.
- SB 120 An Act to require that certain bond sales be competitive.
- SB 136 An Act to require convicted sex offenders to register their online identifiers, to allow limited release of online identifier information in the sex offender registry to certain communications service entities, to make an appropriation therefore, and to provide penalties to violations thereof.

SB 137	An Act to identify medical expenses recoverable in personal injury actions.
SB 141	An Act to prohibit certain acts of sexual penetration and contact between high school employees and students and to provide penalties therefore.
SB 144	An Act to prohibit age misrepresentation with intent to solicit a minor and to provide a penalty therefor.
SB 147	An Act to revise certain provisions regarding the enforcement of seat belt laws.
SB 160	An Act to require the Unified Judicial System to provide internet access to certain criminal history information.
SB 165	An Act to provide a preference for residents in competitive bids for certain public contracts.
SB 167	An Act to make an appropriation to the railroad trust fund to enhance certain railroad facilities.
SB 189	An Act to revise certain provisions regarding public records and the accessibility of public records
HB 1063	An Act to provide for the use of a DNA profile in certain warrants, indictments, and informations.
HB 1066	An Act to revise certain provisions regarding deceptive trade practices.
HB 1074	An Act to authorize court ordered release of certain child abuse or neglect records.
HB 1086	An Act to extend to postsecondary campuses certain protections relating to the possession of dangerous weapons.
HB 1101	An Act to provide for an order of joint physical care over certain children whose parents exercise joint legal custody and to create a rebuttable presumption against joint legal custody and joint physical custody under certain circumstances.

HB 1116	An Act to authorize senior citizens to hunt deer using crossbows.
HB 1121	An Act to prohibit the employment of illegal aliens and to provide a penalty therefor.
HB 1128	An Act to provide for the regulation of tanning devices.
HB 1133	An Act to revise the circumstances when a prospective juror may be challenged for cause due to an attorney-client relationship.
HB 1141	An Act to prohibit the implanting of a microchip and provide a civil recovery.
HB 1176	An Act to require statewide livestock ownership inspection.
HB 1177	An Act to create the beverage container recycling and redemption program.
HB 1195	An Act to revise the requirements for a damage disclosure statement for motor vehicles.
HB 1196	An Act to allow the fingerprinting of children for certain criminal offenses.
HB 1197	An Act to revise certain provisions regarding the requirement of passenger restraint in a passenger vehicle.
HB 1207	An Act to establish a pilot program to collect and maintain certain statistics related to traffic law enforcement.
HB 1217	An Act to authorize the creation of a circuit court judgeship in the Seventh Judicial Circuit and to make an appropriation therefore.
HB 1235	An Act to reduce the license fees for motor vehicles displaying distinctive license plates for Purple Heart recipients.
HB 1246	An Act to provide for a public records dispute resolution procedure.
HB 1253	An Act to require that home studies conducted for custody determinations be completed by certain professionals.

HB 1261 An Act to regulate the right to carry a firearm on the campuses of public institutions of higher education.

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
TTY (605) 773-6585
www.state.sd.us/atg

LARRY LONG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

April 4, 2008

MEMORANDUM

TO: All Interested Persons
FROM: Scott R. Swier, Assistant Attorney General
RE: **Legislation passed by the 2008 Legislature**

The 2008 South Dakota Legislature considered approximately 620 pieces of legislation. The House introduced 373 bills and the Senate introduced 247 bills. Governor Rounds signed 278 bills into law. The Legislature overrode one (1) of Governor Rounds' vetoes.

The Attorney General requested the introduction of nine (9) pieces of legislation during the 2008 Legislative Session. The Legislature adopted eight (8) of the nine (9) bills introduced by the Attorney General:

House Bill 1059 repeals the restriction on the number of personnel to be employed by the Office of the Attorney General's consumer complaint program.

House Bill 1060 - revises the statute of limitations regarding deceptive trade practices from two (2) to four (4) years after the occurrence or discovery of the deceptive conduct.

House Bill 1061 revises the penalty for the distribution or possession with intent to distribute marijuana to a minor.

House Bill 1062 includes officers of the National Park Service in the definition of a "federal law enforcement officer."

House Bill 1064 revises the crime of aggravated incest.

House Bill 1065 revises certain provisions regarding the 24/7 sobriety program.

House Bill 1066 This bill would have revised certain provisions regarding deceptive trade practices. However, the bill died in House Judiciary Committee.

House Bill 1067 makes an appropriation to defray operation costs of the 24/7 sobriety program and declares an emergency.

House Bill 1068 authorizes the Office of the Attorney General to construct a storage facility in Rapid City, South Dakota, and to make an appropriation therefore.

The Legislature also passed the following bills which, unless otherwise noted, will become effective on July 1, 2008:

Senate Bill 13 revises certain provisions regarding the suspension of a minor's driving privileges. This bill amends SDCL 32-12-15 and includes suspension of a minor's driving privileges for county and municipal traffic violations.

Senate Bill 53 revises certain provisions relating to capital punishment. This comprehensive bill was brought by the Committee on State Affairs at the request of the Department of Corrections. A copy of the DOC's lengthy "Bill Brief" regarding SB 53 can be provided upon request.

Senate Bill 63 requires local law enforcement officers to provide certain information to repossession businesses under certain circumstances.

Senate Bill 65 defines intentional exposure to HIV infection by sexual intercourse as a sex crime subject to registry as a sex offender.

Senate Bill 69 adds marijuana to the list of abusive substances for the purposes of determining child abuse.

Senate Bill 77 repeals the provision that prohibits radio or television broadcasting or taking of photographs of judicial proceedings from courtrooms.

Senate Bill 109 authorizes the Fourth Circuit drug court program in the Unified Judicial System ("UJS"). This bill authorizes the UJS to continue the Fourth Circuit's drug court program for the purpose of providing intensive, supervised rehabilitation to nonviolent adult felony offenders who abuse controlled substances. This bill also provides an emergency appropriation.

Senate Bill 133 requires that any adult arrested for a "qualifying offense" provide a DNA sample.

Senate Bill 186 revises certain provisions regarding public records. Specifically, this bill adopts the dispute resolution procedure authored by the Attorney General's Open Records Task Force.

Senate Bill 199 revises certain provisions concerning public meetings. Specifically, this bill provides that "It does not constitute an official meeting if members of a political subdivision of this state are attending a meeting of the state or one of its political subdivisions, a board, a commission, an association, an agency, or any other public entity for which public notice is provided pursuant to § 1-25-1.1 for the purpose of providing information or observing, and the notice requirements in § 1-25-1.1 do not apply."

House Bill 1001 provides for a jury trial in forfeiture proceedings. This bill codifies the South Dakota Supreme Court's recent decision in *State of South Dakota v. One 1969 Blue Pontiac Firebird, et al.*, 737 NW2d 271 (SD 2007). In this case, our Supreme Court held that SDCL 34-20B-88 was unconstitutional to the extent it did not provide for a jury trial in a forfeiture action.

House Bill 1030 revises certain provisions regarding the appointment of notaries public and the requirements of notary public seals.

House Bill 1053 places certain substances on the controlled substances schedule and declares an emergency. Specifically, HB 1053 adds (1) lisdexamfetamine, its salts, isomers, and salts of its isomers to SDCL 34-20B-16; and (2) Oripavine (3-O-demethylthebaine or 6,7,8,14-tetradhydro-4,5-alpha-epoxy-6-6 methoxy-17-methylmorphinan-3-ol) to SDCL 34-20B-17.

House Bill 1122 increases the jurisdictional amount in certain civil actions and small claims proceedings to \$12,000.00.

House Bill 1138 prohibits the use of a false academic degree or a degree that is not completed and makes the act a Class 1 misdemeanor.

House Bill 1151 regulates the location and hours of operation of adult oriented businesses.

House Bill 1162 prohibits the branding of a minor. HB 1162 makes a violation a Class 1 misdemeanor, and any second or subsequent violation a Class 6 felony.

House Bill 1163 increases the duration of juvenile diversion programs from three (3) to six (6) months.

House Bill 1168 clarifies the penalty applicable to violations of certain no contact orders.

House Bill 1173 revises certain provisions pertaining to the effect of suspended impositions of sentence on parole eligibility of certain offenders. Specifically, HB 1173 provides that SDCL 24-15A be amended by adding the following new section:

If a person receives a suspended imposition of sentence for an offense committed on or after July 1, 2008, and that offense constitutes a felony under the laws of the state, any other state, or the United States at the time of the suspension of imposition, that offense, whether or not discharge and dismissal have occurred, shall be considered a prior felony conviction for purposes of establishment of an initial parole date pursuant to this chapter. The date of the first order suspending the imposition of sentence, whether or not discharge and dismissal have occurred, shall be the date of conviction for purposes of establishment of an initial parole date pursuant to this chapter.

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House Bill 1210 prohibits recyclers, scrap metal dealers, or scrap yard operators from purchasing certain beer kegs and makes a violation a Class 2 misdemeanor.

House Bill 1239 permits persons convicted of driving under the influence to operate a vehicle for 24/7 sobriety testing. HB 1239 also contains an emergency clause.

House Bill 1260 revises sex offender registry provisions for persons without a residence address.

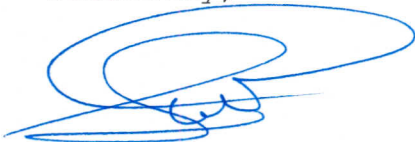
House Bill 1265 prohibits the sale, purchase, use, or possession of alcohol without liquid devices and makes the violation a Class 1 misdemeanor.

House Bill 1271 abolishes the doctrine of *abatement ab initio* of a criminal proceeding and provides for the posthumous sentencing of certain criminal defendants.

House Bill 1313 prohibits the use of certain electronic communication devices to communicate threats and harassment and makes a violation a Class 1 misdemeanor.

Please feel free to contact me if you need any additional information. You can access all of the bills introduced by the 2008 Legislature at the South Dakota Legislative Research Counsel's website. The web address is:
<http://legis.state.sd.us/sessions/2008/index.aspx>

Sincerely,



Scott R. Swier
Assistant Attorney General

SRS/dd

