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2009 Legislative Session Legislation of Significance

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STATE OF SOUTH DAKOTA



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May 1, 2009

Charles P. Schroyer
Executive Director
South Dakota State's Attorney's Association
PO Box 1174
Pierre, South Dakota 57501

Dear Mr. Schroyer:

I am pleased to provide to the South Dakota State's Attorney's Association the Attorney General's "2009 Legislation of Significance" Report.

This Report covers the noteworthy changes made during the 2009 Legislative Session in the areas of Criminal Law, Juvenile Law, Civil Law, Election Law, Sex Offender Registration, Law Enforcement, Open Government, and Post-Conviction Proceedings.

I hope this Report will be a valuable resource to prosecutors and law enforcement officers who strive to protect the people of our state. Please do not hesitate to contact my office whenever you need assistance.

Very truly yours,

A handwritten signature in blue ink that reads "Larry Long".

Larry Long
ATTORNEY GENERAL

LL/lde



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May 1, 2009

TO: Attorney General Larry Long
Chief Deputy Attorney General Charles McGuigan
South Dakota Attorney General's Office
Director Brian Gortmaker - South Dakota DCI
Assistant Director Trevor Jones - South Dakota DCI
South Dakota Division of Criminal Investigation
South Dakota State's Attorney's Association

FROM: Scott R. Swier, Assistant Attorney General

RE: **Executive Summary - 2009 Legislative Session**

The 2009 South Dakota Legislature considered over 600 bills, resolutions, and commemorations. The House of Representatives introduced 301 bills and the Senate introduced 203 bills. Governor Rounds signed 273 bills into law. The Legislature overrode one (1) of Governor Rounds' vetoes.

Attorney General Long introduced three (3) pieces of legislation during the 2009 Legislative Session. The Legislature adopted all three (3) of the bills introduced by the Attorney General:

House Bill 1079 - revises certain provisions regarding the sex offender registry.

House Bill 1080 - revises certain provisions relating to internet and mail order sales of cigarettes and tobacco products.

House Bill 1081 - makes an appropriation for operation costs of the 24/7 sobriety program and declares an emergency.

The Legislature also passed the following bills which, unless otherwise noted, will become effective on July 1, 2009:

Senate Bill 15 revises certain provisions regarding the confidentiality and release of certain child abuse or neglect information.

Senate Bill 70 repeals the provision requiring a forty-eight hour waiting period to purchase a pistol.

Senate Bill 74 directs the Office of the Attorney General to study the creation of a state medical examiner system.

Senate Bill 108 excludes parole agents from concealed weapons permit requirements.

Senate Bill 123 revises certain evidentiary rules relating to the statements of children.

Senate Bill 131 authorizes sheriffs to order autopsies.

Senate Bill 147 provides for public access to public records, to provide certain exemptions, and to provide for judicial remedies for noncompliance.

Senate Bill 173 revises the elements of the crimes of vehicular homicide and vehicular battery.

Senate Bill 183 establishes certain requirements concerning the publication of county notices.

House Bill 1015 revises certain provisions regarding inmate appeal of prison disciplinary actions.

House Bill 1016 revises the applicability of the rules of evidence to proceedings before the Board of Pardons and Paroles.

House Bill 1017 revises certain provisions regarding the escape from a nonsecure facility.

House Bill 1084 permits the appointment of a special advocate to represent the best interests of an apparent or alleged abused or neglected child.

House Bill 1085 revises certain provisions concerning magistrate judge jurisdiction.

House Bill 1087 revises certain provisions concerning the number of peremptory challenges in cases involving very high felonies.

House Bill 1090 prohibits the possession of Salvia divinorum or salvinorin A and declares an emergency.

House Bill 1092 regulates the practice of genetic counseling and prohibits the practice of genetic counseling without a license.

House Bill 1097 provides for certain filing fees and surcharges in certain civil cases and provides exemptions in certain cases.

House Bill 1101 allows affidavits for change of judge in habeas corpus actions.

House Bill 1104 authorizes a sentencing court to impose consecutive revocations of hunting, fishing, or trapping privileges under certain conditions.

House Bill 1122 requires that prosecutors notify victims of domestic abuse regarding the status of their case.

House Bill 1134 requires notice of the cost of certain public notices.

House Bill 1153 revises the elements of the crime of indecent exposure involving a child, revises the elements of the crime of indecent exposure, and establishes the crime of private indecent exposure.

House Bill 1155 requires that the testing of blood samples of suspects of sexual assault be initiated within a specified time.

House Bill 1163 provides for excusing certain elderly persons from jury duty upon request.

House Bill 1166 provides for DNA testing for certain inmates for the purpose of determining whether they may have been wrongfully convicted.

House Bill 1184 clarifies provisions dealing with the initiative process.

House Bill 1207 provides for the reduction of certain sentences upon provision of substantial assistance from the recipient.

House Bill 1240 prohibits smoking tobacco or carrying lighted tobacco products in certain places and requires certain persons to inform violators of the prohibition.

House Bill 1260 requires that a request for proposals be issued for certain state contracts for professional services.

House Bill 1271 authorizes the South Dakota Building Authority and the Department of Corrections to provide for the purchase, design, construction, and equipping of a combined minimum security/parole facility in Rapid City for the Department of Corrections.

Please feel free to contact me if you need any additional information. You can access all of the bills introduced by the 2009 Legislature at the South Dakota Legislative Research Council's website. The website address is:
<http://legis.state.sd.us/sessions/2009/BillList.aspx>

Sincerely,



Scott R. Swier
Assistant Attorney General

SRS/dd

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ATTORNEY GENERAL BILLS

HB 1079 An Act to revise certain provisions regarding the sex offender registry.

Section 1. That § 22-24B-2 be amended to read as follows:

22-24B-2. Any person who has been convicted for commission of a sex crime, as defined in § 22-24B-1, shall register as a sex offender. The term, convicted, includes a verdict or plea of guilty, a plea of nolo contendere, and a suspended imposition of sentence which has not been discharged pursuant to § 23A-27-14 prior to July 1, 1995. Any juvenile fifteen years or older shall register as a sex offender if that juvenile has been adjudicated of a sex crime as defined in § 22-22-7.2, 22-24B-1(1), or 22-24B-1(9), or of an out-of-state or federal offense that is comparable to the elements of these three sex crimes or any crime committed in another state if the state also requires a juvenile adjudicated of that crime to register as a sex offender in that state. The term, adjudicated, includes a court's finding of delinquency, an admission, and a suspended adjudication of delinquency which has not been discharged pursuant to § 26-8C-4 prior to July 1, 2009. The sex offender shall register within five days of coming into any county to reside, temporarily domicile, attend school, attend postsecondary education classes, or work. Registration shall be with the chief of police of the municipality in which the sex offender resides, temporarily domiciles, attends school, attends postsecondary education classes, or works, or, if no chief of police exists, then with the sheriff of the county. If the sex offender is not otherwise registered in the state, the sex offender shall register within five days of coming into any county when the sex offender applies for or receives a South Dakota driver license, registers a motor vehicle, establishes a postal address, or registers to vote. A violation of this section is a Class 6 felony. Any person whose sentence is discharged under § 23A-27-14 after July 1, 1995, shall forward a certified copy of such formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the person is then registered under this section. Upon receipt of such notice, the person shall be removed from the sex

offender registry open to public inspection and shall be relieved of further registration requirements under this section. Any juvenile whose suspended adjudication is discharged under § 26-8C-4 after July 1, 2009, shall forward a certified copy of the formal discharge by certified mail to the Division of Criminal Investigation and to local law enforcement where the juvenile is then registered under this section. Upon receipt of the notice, the juvenile shall be removed from the sex offender registry open to public inspection and shall be relieved of further registration requirements under this section.

HB 1080 An Act to revise certain provisions relating to internet and mail order sales of cigarettes and tobacco products.

Section 1. That § 10-50-1 be amended to read as follows:

10-50-1. Terms used in this chapter mean:

- (1) "Consumer," any individual who is not a retailer or a licensed distributor or wholesaler pursuant to § 10-50-9;
- (2) "Dealer," or "retailer," any person other than a distributor or wholesaler, as defined herein, who is engaged in this state in the business of selling cigarettes or tobacco products at retail;
- (3) "Distributor," any person engaged in this state in the business of producing or manufacturing cigarettes, or importing into the state cigarettes, at least seventy-five percent of which are purchased directly from the manufacturers thereof;
- (4) "Licensed distributor," or "licensed wholesaler," a distributor or wholesaler licensed under the provisions of this chapter;
- (5) "Person," any individual, firm, fiduciary, partnership, limited liability company, corporation, trust, or association, however formed;
- (6) "Sale" or "sell," shall include or apply to gifts, exchanges, and barter;
- (7) "Secretary," the secretary of revenue and regulation;
- (8) "Tobacco products," cigars, snuff, chewing tobacco, and any other products

made up or composed of tobacco in whole or in part, except cigarettes.

Section 2. That § 10-50-93 be repealed.

Section 3. That § 10-50-94 be repealed.

Section 4. That § 10-50-95 be repealed.

Section 5. That § 10-50-96 be repealed.

Section 6. That § 10-50-97 be repealed.

Section 7. That § 10-50-98 be repealed.

Section 8. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

No person who is engaged in the business of selling or distributing cigarettes or tobacco products may ship or transport, or cause to be shipped or transported, cigarettes or tobacco products to any consumer in the state. This section applies regardless of whether the person engaged in the business of selling or distributing cigarettes or tobacco products is located within or without the state.

Section 9. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

The attorney general may seek an injunction to restrain a threatened or actual violation of section 8 of this Act.

Section 10. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

The attorney general may bring a civil action in circuit court for any violation of section 8 of this Act. In a civil action, in addition to injunctive or any other relief, the court may impose a civil penalty, for a first violation of section 8 of this Act, in the amount of one thousand dollars or five times the retail value of the cigarettes or tobacco products involved, whichever is greater. A subsequent violation of section 8 of this Act is punishable by a civil penalty of five thousand dollars or five times the retail value of the cigarettes or tobacco products involved, whichever is greater.

Section 11. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Each shipment, transport, or attempted shipment or transport, of cigarettes or tobacco products in violation of section 8 of this Act constitutes a separate violation.

Section 12. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Any cigarettes or tobacco products shipped, transported, or attempted to be shipped or transported, in violation of section 8 of this Act shall be forfeited to the state and destroyed. In addition, any profit, gain, gross receipt, or other benefit from the violation of section 8 of this Act shall be disgorged and paid to the state treasurer for deposit in the state's general fund.

Section 13. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as follows:

Unless otherwise expressly provided, the penalties or remedies, or both, under sections 9 to 12, inclusive, of this Act are in addition to any other penalties and remedies available under any other law of the state. Nothing in this Act prohibits the collection of tax against a person receiving cigarettes or tobacco products in violation of this chapter.

HB 1081 An Act to make an appropriation for operation costs of the 24/7 sobriety program and to declare an emergency.

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

Section 1. There is hereby appropriated from the law enforcement officers training fund the sum of one hundred sixteen thousand dollars (\$ 116,000), 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. There is hereby appropriated the sum of two hundred fifty-four thousand five hundred fifty-three dollars (\$ 254,553), or so much thereof as may be necessary, in other

fund expenditure authority to the Division of Criminal Investigation for costs related to the operation of the 24/7 sobriety project.

Section 3. The attorney general shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by June 30, 2010 , shall revert in accordance with the procedures prescribed in chapter 4-8.

Section 5. Whereas, this Act is necessary for the support of the state government and its existing public institutions, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

BILLS OF INTEREST

SB 15 An Act to revise certain provisions regarding the confidentiality and release of certain child abuse or neglect information.

Section 1. That § 26-8A-13 be amended to read as follows:

26-8A-13. All investigative case records and files relating to reports of child abuse or neglect are confidential, and no disclosure of any such records, files, or other information may be made except as authorized in chapter 26-7A or this chapter. Any person who knowingly violates the confidential nature of the records, files, or information is guilty of a Class 1 misdemeanor. The Department of Social Services may release records, files, or other information to the following parties upon receipt of a request showing that it is necessary for the parties to have such information in the performance of official functions relating to child abuse or neglect:

- (1) The attorney general, the state's attorneys, law enforcement agencies, protective services workers, and judges of the courts investigating reports of known or suspected child abuse or neglect;
- (2) The attorney or guardian ad litem of the child who is the subject of the information;
- (3) Public officials or their authorized representatives who require the information in connection with the discharge of official duties;
- (4) Institutions and agencies that have legal responsibility or authorization to care for, treat, or supervise a child who is the subject of the information or report;
- (5) An adoptive parent of the child who is the subject of the information or report;
- (6) A foster parent, kinship provider, or prospective adoptive parent who is or may be caring for a child in the custody of the Department of Social Services who is the subject of the information or report;

(7) A state, regional, or national registry of child abuse and neglect cases and courts of record of other states;

(8) A validly appointed and registered child protection team under § 26-8A-17;

(9) A physician caring for a child who is suspected or found to be abused or neglected;

(10) State hearing examiners and any person, or the legal representative of any person, who is the subject of the report for purposes directly related to review under § 26-8A-11; and

(11) A person eligible to submit an adoptive home study report under § 25-6-9.1 or 26-4-15. However, the information may only be released for the purpose of screening applicants.

Information received by an authorized receiving party shall be held confidential by the receiving party. However, the court may order the release of the information or any portion of it necessary for determination of an issue before the court.

Upon written request, the Department of Social Services shall release findings or information regarding the abuse or neglect of a child that resulted in a fatality or near fatality of the child unless the release of the findings or information would jeopardize a pending criminal investigation or proceeding. The findings or information to be released shall relate to the acts of child abuse or neglect that caused the fatality or near fatality of the child. However, the identity of the child may never be released. For the purpose of this chapter, near fatality means an act that, as certified by a physician, placed the child in serious or critical condition.

SB 70 An Act to repeal the provision requiring a forty-eight hour waiting period to purchase a pistol.

Section 1. That § 23-7-9 be amended to read as follows:

23-7-9. When a pistol is delivered, the pistol shall be securely wrapped and shall be

unloaded. A pistol that is securely wrapped and delivered to a purchaser pursuant to this section is not a concealed weapon under § 22-14-9. A violation of this section is a Class 1 misdemeanor.

SB 74 An Act to direct the Office of the Attorney General to study the creation of a state medical examiner system.

Section 1. The Office of the Attorney General shall conduct a study of the composition, scope, and administration of a state medical examiner system in South Dakota. The study shall gather the data and information regarding the creation of a state medical examiner system, examine other states' medical examiner systems, and analyze the range of issues affecting the creation, organization, and functions of a state medical examiner system. The Office of the Attorney General shall consult with all appropriate interests including sheriffs, police chiefs, county commissioners, county coroners, criminal investigators, prosecutors, funeral directors, forensic pathologists, the Department of Health, and the University of South Dakota School of Medicine. The Office of the Attorney General shall submit a report regarding its findings and recommendations and draft legislation, if any, to the Executive Board of the Legislative Research Council by November 1, 2009.

SB 108 An Act to exclude parole agents from concealed weapons permit requirements.

Section 1. That § 22-14-9 be amended to read as follows:

22-14-9. Any person, other than a law enforcement officer or parole agent acting under color of authority, who:

(1) Carries a pistol or revolver, loaded or unloaded, concealed on or about his or her person without a permit as provided in chapter 23-7; or

(2) Carries a pistol or revolver, loaded or unloaded, concealed in any vehicle while operating the vehicle, without a permit as provided in chapter 23-7;

is guilty of a Class 1 misdemeanor.

Section 2. That § 23-7-8.1 be amended to read as follows:

23-7-8.1. The form of the permit to carry a concealed pistol shall be prescribed by the secretary of state pursuant to § 23-7-8. The permit shall list the applicant's name, address, and the expiration date of the permit. The holder of a permit may carry a concealed pistol anywhere in South Dakota except in any licensed on-sale malt beverage or alcoholic beverage establishment that derives over one-half of its total income from the sale of malt or alcoholic beverages. Nothing in this section prevents law enforcement officers, parole agents, security guards employed on the premises, and other public officials with the written permission of the sheriff from carrying concealed weapons in the performance of their duties or prevents home or business owners from carrying concealed weapons on their property pursuant to § 22-14-11.

SB 123 An Act to revise certain evidentiary rules relating to the statements of children.

Section 1. That § 19-16-38 be amended to read as follows:

19-16-38. A statement made by a child under the age of thirteen, or by a child thirteen years of age or older who is developmentally disabled as defined in § 27B-1-18, describing any act of sexual contact or rape performed with or on the child by another, or describing any act of physical abuse or neglect of the child by another, or any act of physical abuse or neglect of another child observed by the child making the statement, not otherwise admissible by statute or court rule, is admissible in evidence in criminal proceedings against the defendant or in any proceeding under chapters 26- 7A, 26-8A, 26-8B, and 26-8C in the courts of this state if:

(1) The court finds, in a hearing conducted outside the presence of the jury, that the time, content, and circumstances of the statement provide sufficient indicia of reliability; and

- (2) The child either:
 - (a) Testifies at the proceedings; or
 - (b) Is unavailable as a witness.

However, if the child is unavailable as a witness, such statement may be admitted only if there is corroborative evidence of the act.

No statement may be admitted under this section unless the proponent of the statement makes known the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant to the adverse party sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet the statement.

SB 131 An Act to authorize sheriffs to order autopsies.

Section 1. That § 23-14-9.1 be amended to read as follows:

23-14-9.1. If a state's attorney or a sheriff or a coroner has reason to believe that a deceased person may have died in his or her jurisdiction by unlawful means, the state's attorney, sheriff, or coroner may order and direct a physician or surgeon to perform an autopsy. If in the public interest, the county coroner may order an autopsy on those deaths falling within the county coroner's jurisdiction mentioned in subdivisions 23-14-18(1) to (5), inclusive.

Section 2. That § 34-26-2 be amended to read as follows:

34-26-2. An autopsy may be performed upon the body of a deceased person by a physician or surgeon whenever so authorized in writing, or by electronically recorded telephone communication:

- (1) By the decedent during the decedent's lifetime; or
- (2) By the decedent's surviving spouse; or
- (3) If the surviving spouse is incompetent or not available or if there be no surviving spouse, by an adult child, parent, brother, or sister of the decedent. However,

such autopsy may not be performed under a consent given as required by this subdivision if, before such autopsy is performed, any adult child or parent of the decedent objects in writing to the physician or surgeon by whom the autopsy is to be performed;

(4) By the state's attorney, county sheriff, or investigating county coroner pursuant to § 23-14- 9.1.

Section 3. That § 34-26-5 be amended to read as follows:

34-26-5. The right to dissect the dead body of a human being exists if the death occurs under circumstances in which a coroner is authorized by law to hold an inquest upon the body or under the provisions of § 23-14-9.1, and a coroner, sheriff, or the state's attorney designated by law to order an autopsy authorizes such dissection for the purposes of the inquest.

SB 147 An Act to provide for public access to public records, to provide certain exemptions, and to provide for judicial remedies for noncompliance.

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

1-27-1. Except as otherwise expressly provided by statute, all citizens of this state, and all other persons interested in the examination of the public records, as defined in section 2 of this Act, are hereby fully empowered and authorized to examine such public record, and make memoranda and abstracts therefrom during the hours the respective offices are open for the ordinary transaction of business and, unless federal copyright law otherwise provides, obtain copies of public records in accordance with this chapter.

Each government entity or elected or appointed government official shall, during normal business hours, make available to the public for inspection and copying in the manner set forth in this chapter all public records held by that entity or official.

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

Unless any other statute, ordinance, or rule expressly provides that particular

information or records may not be made public, public records include all records and documents, regardless of physical form, of or belonging to this state, any county, municipality, political subdivision, or tax-supported district in this state, or any agency, branch, department, board, bureau, commission, council, subunit, or committee of any of the foregoing. Data which is a public record in its original form remains a public record when maintained in any other form. For the purposes of this Act, a tax-supported district includes any business improvement district created pursuant to chapter 9-55.

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

If a custodian of a public record of a county, municipality, political subdivision, or tax-supported district provides to a member of the public, upon request, a copy of the public record by transmitting it from a modem to an outside modem, a reasonable fee may be charged for such specialized service. Such fee may include a reasonable amount representing a portion of the amortization of the cost of computer equipment, including software, necessarily added in order to provide such specialized service. This section does not require a governmental entity to acquire computer capability to generate public records in a new or different form if that new form would require additional computer equipment or software not already possessed by the governmental entity.

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

The provisions of this Act shall be liberally construed whenever any state, county, or political subdivision fiscal records, audit, warrant, voucher, invoice, purchase order, requisition, payroll, check, receipt, or other record of receipt, cash, or expenditure involving public funds is involved in order that the citizens of this state shall have the full right to know of and have full access to information on the public finances of the government and the public bodies and entities created to serve them. Use of funds as needed for criminal investigatory/confidential informant purposes is not subject to this section, but any

budgetary information summarizing total sums used for such purposes is public. Records which, if disclosed, would impair present or pending contract awards or collective bargaining negotiations are exempt from disclosure.

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

Each public body shall maintain a file of all letters of denial of requests for records. This file shall be made available to any person on request.

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

The following records are not subject to sections 1, 2, and 4 of this Act:

(1) Personal information in records regarding any student, prospective student, or former student of any educational institution if such records are maintained by and in the possession of a public entity, other than routine directory information specified and made public consistent with 20 U.S.C. 1232g, as such section existed on January 1, 2009;

(2) Medical records, including all records of drug or alcohol testing, treatment, or counseling, other than records of births and deaths. This law in no way abrogates or changes existing state and federal law pertaining to birth and death records;

(3) Trade secrets, the specific details of bona fide research, applied research, or scholarly or creative artistic projects being conducted at a school, postsecondary institution or laboratory funded in whole or in part by the state, and other proprietary or commercial information which if released would infringe intellectual property rights, give advantage to business competitors, or serve no material public purpose;

(4) Records which consist of attorney work product or which are subject to any privilege recognized in chapter 19-13;

(5) Records developed or received by law enforcement agencies and other public bodies charged with duties of investigation or examination of persons, institutions, or businesses, if the records constitute a part of the examination, investigation, intelligence

information, citizen complaints or inquiries, informant identification, or strategic or tactical information used in law enforcement training. However, this subdivision does not apply to records so developed or received relating to the presence of and amount or concentration of alcohol or drugs in any body fluid of any person, and this subdivision does not apply to a 911 recording or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure. This law in no way abrogates or changes § § 23-5-7 and 23-5-11 or testimonial privileges applying to the use of information from confidential informants;

(6) Appraisals or appraisal information and negotiation records concerning the purchase or sale, by a public body, of any interest in real or personal property;

(7) Personnel information other than salaries and routine directory information;

(8) Information solely pertaining to protection of the security of public or private property and persons on or within public or private property, such as specific, unique vulnerability assessments or specific, unique response plans, either of which is intended to prevent or mitigate criminal acts, emergency management or response, or public safety, the public disclosure of which would create a substantial likelihood of endangering public safety or property; computer or communications network schema, passwords, and user identification names; guard schedules; lock combinations; or any blueprints, building plans, or infrastructure records regarding any building or facility that expose or create vulnerability through disclosure of the location, configuration, or security of critical systems;

(9) The security standards, procedures, policies, plans, specifications, diagrams, access lists, and other security-related records of the Gaming Commission and those persons or entities with which the commission has entered into contractual relationships. Nothing in this subdivision allows the commission to withhold from the public any information relating to amounts paid persons or entities with which the commission has entered into contractual relationships, amounts of prizes paid, the name of the prize winner, and the municipality, or county where the prize winner resides;

(10) Personally identified private citizen account payment information, credit information on others supplied in confidence, and customer lists;

(11) Records or portions of records kept by a publicly funded library which, when examined with or without other records, reveal the identity of any library patron using the library's materials or services;

(12) Correspondence, memoranda, calendars or logs of appointments, working papers, and records of telephone calls of public officials or employees;

(13) Records or portions of records kept by public bodies which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in South Dakota if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass. This subdivision does not apply to the release of information for the purpose of scholarly research, examination by other public bodies for the protection of the resource or by recognized tribes, or the federal Native American Graves Protection and Repatriation Act;

(14) Records or portions of records kept by public bodies which maintain collections of archeological, historical, or paleontological significance which nongovernmental donors have requested to remain closed or which reveal the names and addresses of donors of such articles of archaeological, historical, or paleontological significance unless the donor approves disclosure, except as the records or portions thereof may be needed to carry out the purposes of the federal Native American Graves Protection and Repatriation Act and the Archeological Resources Protection Act;

(15) Employment applications and related materials, except for applications and related materials submitted by individuals hired into executive or policymaking positions of any public body;

(16) Social security numbers; credit card, charge card, or debit card numbers and expiration dates; passport numbers, driver license numbers; or other personally identifying numbers or codes; and financial account numbers supplied to state and local

governments by citizens or held by state and local governments regarding employees or contractors;

(17) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel;

(18) Any test questions, scoring keys, results, or other examination data for any examination to obtain licensure, employment, promotion or reclassification, or academic credit;

(19) Personal correspondence, memoranda, notes, calendars or appointment logs, or other personal records or documents of any public official or employee;

(20) Any document declared closed or confidential by court order, contract, or stipulation of the parties to any civil or criminal action or proceeding;

(21) Any list of names or other personally identifying data of occupants of camping or lodging facilities from the Department of Game, Fish and Parks;

(22) Records which, if disclosed, would constitute an unreasonable release of personal information;

(23) Records which, if released, could endanger the life or safety of any person;

(24) Internal agency record or information received by agencies that are not required to be filed with such agencies, if the records do not constitute final statistical or factual tabulations, final instructions to staff that affect the public, or final agency policy or determinations, or any completed state or federal audit and if the information is not otherwise public under other state law, including chapter 15-15A and § 1-26-21;

(25) Records of individual children regarding commitment to the Department of Corrections pursuant to chapters 26-8B and 26-8C;

(26) Records regarding inmate disciplinary matters pursuant to § 1-15-20; and

(27) Any other record made closed or confidential by state or federal statute or rule or as necessary to participate in federal programs and benefits.

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

The following financial, commercial, and proprietary information is specifically exempt from disclosure pursuant to this Act:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data invented, discovered, authored, developed, or obtained by any agency if disclosure would produce private gain or public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal;

(3) Financial and commercial information and records supplied by private persons pertaining to export services;

(4) Financial and commercial information and records supplied by businesses or individuals as part of an application for loans or program services or application for economic development loans or program services;

(5) Financial and commercial information, including related legal assistance and advice, supplied to or developed by the state investment council or the division of investment if the information relates to investment strategies or research, potential investments, or existing investments of public funds;

(6) Proprietary data, trade secrets, or other information that relates to:

(a) A vendor's unique methods of conducting business;

(b) Data unique to the product or services of the vendor; or

(c) Determining prices or rates to be charged for services, submitted by any vendor to any public body;

(7) Financial, commercial, and proprietary information supplied in conjunction with applications or proposals for funded scientific research, for participation in joint

scientific research projects, for projects to commercialize scientific research results, or for use in conjunction with commercial or government testing;

(8) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to any public body.

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

Drafts, notes, recommendations, and memoranda in which opinions are expressed or policies formulated or recommended are exempt from disclosure pursuant to this Act.

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

Any record that is relevant to a controversy to which a public body is a party but which record would not be available to another party under the rules of pretrial discovery for causes pending in circuit court are exempt from disclosure pursuant to this Act.

Section 10. That § 1-27-4 be amended to read as follows:

1-27-4. Any record made open to the public pursuant to this chapter shall be maintained in its original format or in any searchable and reproducible electronic or other format. This chapter does not mandate that any record or document be kept in a particular format nor does it require that a record be provided to the public in any format or media other than that in which it is stored.

Section 11. That § 1-27-6 be repealed.

Section 12. That § 1-27-7 be repealed.

Section 13. That § 1-27-8 be repealed.

Section 14. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

No elected or appointed official or employee of the state or any political subdivision may be compelled to provide documents, records, or communications used for the purpose of the

decisional or deliberative process relating to any decision arising from that person's official duties.

Section 15. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

In response to any request pursuant to § 1-27-36 or 1-27-37, a public record officer may redact any portion of a document which contains information precluded from public disclosure by § 1-27-3 or which would unreasonably invade personal privacy, threaten public safety and security, disclose proprietary information, or disrupt normal government operations. A redaction under this section is considered a partial denial for the application of § 1-27-37.

Section 16. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

Any subscription or license holder list maintained by the Department of Game, Fish and Parks may be made available to the public for a reasonable fee. State agencies are exempt from payment of this fee for approved state use. The Game, Fish and Parks Commission may promulgate rules pursuant to chapter 1-26 to establish criteria for the sale and to establish the fee for the sale of such lists.

Any automobile liability insurer licensed in the state, or its certified authorized agent, may have access to the name and address of any person licensed or permitted to drive a motor vehicle solely for the purpose of verifying insurance applicant and policyholder information. An insurer requesting any such name and address shall pay a reasonable fee to cover the costs of producing such name and address. The Department of Public Safety shall set such fee by rules promulgated pursuant to chapter 1-26.

Any list released or distributed under this section may not be resold or redistributed. Violation of this section by the resale or redistribution of any such list is a Class 2 misdemeanor.

Section 17. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this chapter do not apply to records and documents of the Unified Judicial System.

Section 18. That § 23-5-11 be amended to read as follows:

23-5-11. Confidential criminal justice information and criminal history information are specifically exempt from disclosure pursuant to this Act and may be withheld by the lawful custodian of the records. Information about calls for service revealing the date, time, and general location and general subject matter of the call is not confidential criminal justice information and may be released to the public, at the discretion of the executive of the law enforcement agency involved, unless the information contains intelligence or identity information that would jeopardize an ongoing investigation. The provisions of this section do not supersede more specific provisions regarding public access or confidentiality elsewhere in state or federal law.

Section 19. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

The secretary of corrections may prohibit the release of information to inmates or their agents regarding correctional operations, department policies and procedures, and inmate records of the requesting inmate or other inmates if the release would jeopardize the safety or security of a person, the operation of a correctional facility, or the safety of the public. This section does not apply to an inmate's attorney requesting information that is subject to disclosure under this chapter.

Section 20. That § 1-15-20.1 be amended to read as follows:

1-15-20.1. For the purposes of § 1-15-20 and chapter 1-27, an inmate is any person, adult, or juvenile, who has been sentenced or committed to or placed in a facility or program under the control of the Department of Corrections pursuant to § 1-15-1.4.

Section 21. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

This chapter does not require the redaction of any record, or any portion of a record, which is recorded in the office of the register of deeds prior to July 1, 2010.

Section 22. That chapter 1-27 be amended by adding thereto a NEW SECTION to read as follows:

No civil or criminal liability may attach to a public official for the mistaken denial or provision of a record pursuant to this chapter if that action is taken in good faith.

Section 23. That chapter 10-45B be amended by adding thereto a NEW SECTION to read as follows:

The name of any person or entity that receives a refund or credit of sales, use, or contractors excise tax pursuant to this chapter and the amount of any such refund or credit is public information and shall be available and open to public inspection as provided in § 1-27-1.

SB 173 An Act to revise the elements of the crimes of vehicular homicide and vehicular battery.

Section 1. That § 22-16-41 be amended to read as follows:

22-16-41. Any person who, while under the influence of alcohol, drugs, or substances in a manner and to a degree prohibited by § 32-23-1, without design to effect death, operates or drives a vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court shall order that the driver's license of any person convicted of vehicular homicide be revoked for a period of not less than ten years from the date sentence is imposed or ten 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.

Section 2. That § 22-18-36 be amended to read as follows:

22-18-36. Any person who, while under the influence of alcohol, drugs, or substances in a manner and to a degree prohibited by § 32-23-1, without design to effect serious bodily injury, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes the serious bodily injury of another person, including an unborn child, is guilty of vehicular battery. Vehicular battery is a Class 4 felony. In addition to any other penalty prescribed by law, the court shall order that the driver's license of any person convicted of vehicular battery 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.

SB 183 An Act to establish certain requirements concerning the publication of county notices.

Section 1. That § 7-18-3 be amended to read as follows:

7-18-3. At its regular meeting in January of each year the board of county commissioners shall designate three legal newspapers printed in the county as official newspapers. If there are not three legal newspapers within the county, then as many newspapers that are legal newspapers. The board shall publish a full and complete report of all its official proceedings at all regular and special meetings and shall publish proceedings as soon after any meeting as practicable. The board shall pay for publishing the proceedings at a rate not to exceed ninety percent of the legal line rates for weekly newspapers and not to exceed the legal line rate for daily newspapers, as provided in chapter 17-2.

All notices required by law to be published by the county auditor shall also be published in the official newspapers. If any notice includes a legal description of property outside the

incorporated limits of a municipality, the notice may include a physical description of the property from the nearest incorporated municipality.

HB 1015 An Act to revise certain provisions regarding inmate appeal of prison disciplinary actions.

Section 1. That § 24-15A-5 be amended to read as follows:

24-15A-5. The warden shall keep a true record of the conduct of each inmate specifying in the record each infraction of the rules of discipline. Each inmate shall be notified of every entry on the inmate's record of each such infraction of the rules of discipline. The inmate shall have thirty days to challenge, by notifying the warden, the validity of the finding that the inmate committed the rule infraction or the disciplinary sanction imposed. After investigation, the warden may determine that the inmate did not commit the rule infraction and revise the record accordingly. The warden may also modify the imposed disciplinary sanction or rule infraction. The record shall be used by the warden and board in determining the inmate's compliance with the inmate's individual program directive at the time of the inmate's initial parole date. This record may also be used by the board in the determination of discretionary parole releases.

Section 2. That § 24-2-17 be amended to read as follows:

24-2-17. The warden shall keep a true record of the conduct of each inmate and shall specify each infraction of the rules of discipline. Each inmate shall be notified of every entry on the inmate's record of each such infraction of the rules of discipline and shall have thirty days to challenge the validity of the finding that the inmate committed the rule infraction or the disciplinary sanction imposed by notifying the warden. After investigation, the warden may determine that the inmate did not commit the rule infraction and revise the record accordingly. The warden may also modify the imposed disciplinary sanction or rule infraction. The record shall be used whenever the question of any inmate's eligibility for parole or discharge arises pursuant to § 24-5-1.

HB 1016 An Act to revise the applicability of the rules of evidence to proceedings before the Board of Pardons and Paroles.

Section 1. That chapter 24-13 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of chapters 19-9 to 19-12, inclusive, and chapters 19-14 to 19-18, inclusive, do not apply in proceedings before the Board of Pardons and Paroles.

HB 1017 An Act to revise certain provisions regarding the escape from a nonsecure facility.

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

22-11A-1. The term, prisoner, as used in this chapter, includes every person who is in custody by being under arrest or by being under process of law issued from a court of competent jurisdiction, whether civil or criminal. A prisoner at the time of escape need not be in a place designated for the keeping of prisoners.

The term, escape, as used in this chapter, means the departure without lawful authority or the failure to return to custody following an assignment or temporary leave granted for a specific purpose or limited period.

The term, nonsecure correctional facility, as used in this chapter, means a correctional facility or placement that, while it may be locked at night, is generally not locked and not secured by a fence, external wall, or security perimeter and used for the housing of persons who are authorized to have unescorted access to the community for a specific purpose or limited period.

The term, secure correctional facility, as used in this chapter, means a locked or secured correctional facility with a perimeter wall or fence and locked entrances and exits.

Section 2. That § 22-11A-2 be amended to read as follows:

22-11A-2. Any escape by a prisoner constitutes first degree escape if the prisoner effects the escape:

- (1) By means of the use or threat of violence;
- (2) From a secure correctional facility; or
- (3) From the immediate custody of a law enforcement officer or Department of

Corrections employee.

First degree escape is a Class 4 felony.

Section 3. That § 22-11A-2.1 be amended to read as follows:

22-11A-2.1. Any escape by a prisoner constitutes second degree escape if the prisoner effects the escape by means of failure to return to custody following an assignment or temporary leave granted for a specific purpose or limited period or leaves a nonsecure correctional facility without authorization. Second degree escape is a Class 5 felony.

HB 1084 An Act to permit the appointment of a special advocate to represent the best interests of an apparent or alleged abused or neglected child.

Section 1. That § 26-8A-20 be amended to read as follows:

26-8A-20. If a child is an apparent or alleged abused or neglected child, the court may appoint a special advocate to represent the best interests of the child and to assist the child's attorney. If a child has been adjudicated an abused or neglected child and is removed from the child's home with the child's parents, guardian or custodian, the court shall appoint a guardian ad litem or a special advocate to represent the best interests of the child and to assist the child's attorney. The guardian ad litem or special advocate is an officer of the court for the purpose of representing the child's best interests. The guardian ad litem or special advocate shall receive all reports concerning the child and may cause the case to be reviewed by the court pursuant to § 26-8A-23.

HB 1085 An Act to revise certain provisions concerning magistrate judge jurisdiction.

Section 1. That § 16-12B-8 be amended to read as follows:

16-12B-8. A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts:

- (1) To accept defaults for petty offenses;
- (2) To try contested cases involving a petty offense;
- (3) To take pleas of guilty, not guilty, nolo contendere for any criminal offense;

or

(4) To take pleas of guilty, not guilty, nolo contendere for violation of any ordinance, bylaw, or other police regulation of a political subdivision;

if the punishment is a fine not exceeding two thousand dollars or imprisonment for a period not exceeding one year, or both such fine and imprisonment and to impose sentence upon a plea of guilty or nolo contendere. Acceptance of not guilty or nolo contendere pleas shall be in accordance with §§ 23A-7-2 and 23A-7-8, as applicable. A magistrate court with a magistrate judge presiding has concurrent jurisdiction with the circuit courts to try cases for all violations under § 32-22-55 that involve civil penalties, notwithstanding the amount of the civil penalty.

HB 1087 An Act to revise certain provisions concerning the number of peremptory challenges in cases involving very high felonies.

Section 1. That § 23A-20-20 be amended to read as follows:

23A-20-20. If an offense charged is a Class A, Class B, Class C, or Class 1 felony, the prosecution and the defense each have twenty peremptory challenges. In all other felony cases, the prosecution and the defense each have ten peremptory challenges. In misdemeanor cases, the prosecution and the defense each have three peremptory challenges.

Act to revise certain provisions concerning the number of peremptory challenges in cases involving very high felonies.

HB 1090 An Act to prohibit the possession of Salvia divinorum or salvinorin A and to declare an emergency.

Section 1. No person may knowingly possess Salvia divinorum or salvinorin A. It is a Class 1 misdemeanor to possess two ounces or less of Salvia divinorum or salvinorin A. It is a Class 6 felony to possess more than two ounces of Salvia divinorum or salvinorin A.

Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

HB 1092 An Act to regulate the practice of genetic counseling and to prohibit the practice of genetic counseling without a license.

Section 1. Terms used in this Act mean:

- (1) "ABGC," the American Board of Genetic Counseling;
- (2) "ABMG," the American Board of Medical Genetics;
- (3) "Board," The South Dakota Board of Medical and Osteopathic Examiners;
- (4) "Genetic counselor," a person licensed under this Act to engage in the practice of genetic counseling;
- (5) "Referral," a written or telecommunicated authorization for genetic counseling services from a licensed physician or a licensed certified nurse midwife, licensed certified nurse practitioner, licensed clinical nurse specialist, or a licensed physician assistant, who has an agreement and signed protocols with a licensed physician who authorizes referrals to a genetic counselor; and
- (6) "Supervision," the ongoing direct clinical review, for the purposes of training or teaching, by a supervisor approved by the board who monitors the performance or a person's supervised interaction with a client and provides regular documented face-to-face consultation, guidance, and instructions with respect to the clinical skills and competencies of the person supervised. This supervision may be by personal contact or indirect contact by

telecommunication.

Section 2. For the purposes of this Act, genetic counseling is a communication process, conducted by appropriately trained persons that includes:

(1) Assisting a person, the person's family, a health care provider, or the public with comprehending the issues inherent to genetic counseling. Such assistance may include the following:

(a) Appreciating the medical, psychological, and social implications of a disorder including features, variability, usual course, and management options;

(b) Learning how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;

(c) Understanding available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition;

(d) Selecting the most appropriate, accurate, and cost-effective methods of diagnosis; or

(e) Understanding genetic tests, including diagnostic genetic tests, screening tests, or predispositional genetic tests, coordinating testing for inherited disorders, and interpreting complex genetic test results;

(2) Assessing the likelihood of the occurrence or recurrence of an abnormality in the fetus in structure, function, or metabolism or of any potentially inherited or genetically influenced condition. Such assessment may include the following:

(a) Obtaining and analyzing a complete health history of a person and the person's family;

(b) Reviewing pertinent medical records;

(c) Evaluating the risks from exposure to possible mutagens or teratogens; or

(d) Discussing genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members; and

(3) Facilitating an individual's or family's:

- (a) Exploration of the perception of risk and burden associated with a genetic disorder;
- (b) Decision-making regarding testing or medical interventions consistent with the individual's or family's beliefs, goals, needs, resources, or cultural, ethical, or moral views; and
- (c) Adjustment and adaptation to the condition or the genetic risk by addressing needs for psychological, social, and medical support.

Section 3. For the purposes of this Act, the practice of genetic counseling is the process of helping people understand and adapt to the medical, psychological, and familial implications of genetic contributions to disease performed pursuant to a referral. This process integrates the following:

- (1) Interpretation of family and medical histories to assess the chance of disease occurrence or recurrence;
- (2) Education about inheritance, testing, management, prevention, resources, and research; and
- (3) Counseling to promote informed decisions and adaptation to the risk or condition.

Section 4. No person may engage in the practice of genetic counseling, act or represent himself or herself to be a genetic counselor, or use such titles as genetic counselor, licensed genetic counselor, gene counselor, genetic associate, or any words, letters, abbreviations, or insignia, such as certified genetic counselor (CGC), indicating or implying that such person is a genetic counselor, unless such person holds a license or temporary license and otherwise complies with the provisions of this Act and the rules adopted pursuant to this Act. However, any qualified and licensed health care professional who is practicing within the professional's scope of practice may engage in the practice of genetic counseling, without being licensed pursuant to this Act, but may not use the title, genetic counselor, or

any other title indicating or implying that the person is a genetic counselor unless licensed as such in this state. A violation of this section is a Class 1 misdemeanor.

Section 5. Any person desiring to engage in the practice of genetic counseling in this state shall apply to the board for a license and pay the license fee. The application shall contain such information as the board may require. The license fee shall be established by the board by rules promulgated pursuant to chapter 1-26. The license fee may not exceed two hundred dollars. The board may grant a license to any applicant who gives satisfactory proof of being of at least eighteen years of age and who is of good moral character and also fulfills the following requirements:

(1) Education at one of the following levels:

(a) Master's degree from a genetic counseling training program that is accredited by the ABGC and approved by the board; or

(b) Doctoral degree from a medical genetics training program that is accredited by the ABMG and approved by the board; and

(2) Successful completion of all requirements of the certification examination within a period not to exceed four years from initial examination to successful completion and with no more than two attempts.

Section 6. The board may, in compliance with chapter 1-26, refuse to grant a license under this Act for unprofessional, immoral, or dishonorable conduct on the part of the applicant.

Section 7. No licensed genetic counselor may provide genetic counseling to individuals, couples, groups, or families without a documented referral from a physician, certified nurse midwife, licensed certified nurse practitioner, licensed clinical nurse specialist, or a licensed physician assistant. The licensed physician, certified nurse midwife, licensed certified nurse practitioner, licensed clinical nurse specialist, or licensed physician assistant shall maintain supervision of the patient. The licensed genetic counselor shall submit reports to the physician, certified nurse midwife, licensed certified nurse practitioner, licensed clinical

nurse specialist, or licensed physician assistant on any services provided. No genetic testing may be provided unless ordered by a physician, certified nurse midwife, licensed certified nurse practitioner, licensed clinical nurse specialist, or licensed physician assistant.

Section 8. A licensed genetic counselor may provide a general seminar without a referral to a group or organization on genetic counseling if the seminar does not include individual, couple, or family specific counseling.

Section 9. The board may issue a temporary license to an applicant who has paid the temporary license fee, meets all the qualifications for licensure as established in section 5 of this Act with the exception of certification by the ABMG or ABGC, and has submitted evidence to the board that the applicant is a candidate accepted to write the examination or is awaiting the results of the first examination for which the applicant is eligible after graduation from an approved genetic counseling program. The board shall establish a temporary license fee by rules promulgated pursuant to chapter 1-26. The temporary license fee may not exceed one hundred dollars. A temporary licensee shall take the next available examination. If any temporary licensee fails the first sitting of ABGC or ABMG certification examination or the temporary license expires, then he or she may reapply for a second temporary license. A temporary license may not be issued if the applicant has failed the ABGC or ABMG certification examination more than twice. A temporary license expires on the occurrence of the following:

- (1) Issuance of a regular license;
- (2) Failure to pass the board-approved examination; or
- (3) Expiration of the term for which the temporary license was issued.

Section 10. Any licensee practicing pursuant to the authority of a temporary license shall practice under the supervision of a licensed genetic counselor or a physician approved by the board with current ABMG certification in clinical genetics.

Section 11. Each license issued pursuant to this Act shall be renewed annually on a date set by the board. The board shall renew a license upon payment of the renewal fee,

submission of a renewal application in a form approved by the board, and evidence satisfactory to the board of the applicant's successful completion, within a three year period prior to the application for license renewal of five continuing education units or fifty contact hours. Any genetic counselor who maintains current certification by the ABGC or ABMG may document compliance with this requirement by providing proof of current certification by the ABGC or ABMG. The board shall establish the renewal fee by rules promulgated pursuant to chapter 1-26. The fee may not exceed one hundred dollars.

Section 12. The board shall promulgate rules pursuant to chapter 1-26 pertaining to fees, licensure, investigations, and disciplinary proceedings.

Section 13. The board may cancel, revoke, suspend, or limit the license of any genetic counselor issued pursuant to this Act upon satisfactory proof by a preponderance of the evidence, in compliance with chapter 1-26, of such licensee's professional incompetence, or unprofessional or dishonorable conduct as defined in §§ 36-4-29 and 36-4-30, or proof of a violation of this Act in any respect.

Section 14. Upon application, the board may reinstate and renew a license to practice to any person whose license has been cancelled, suspended, or revoked. However, no license that has been cancelled or revoked may be reinstated and renewed prior to one year after the cancellation or revocation. The reinstatement and renewal of any license may be made in such manner and form and under such conditions as the board may require.

Section 15. The board shall appoint a genetic counselor advisory committee composed of a minimum of one genetic counselor and three physicians licensed pursuant to chapter 36-4. Each committee member shall serve a term of three years. However, the terms of initial appointees shall be staggered so that no more than one member's term expires in any one year. No committee member may be appointed to more than three consecutive full terms. If a vacancy occurs, the board shall appoint a person to fill the unexpired term. The committee shall meet at least annually or as deemed necessary to conduct business. The advisory committee shall assist the board in the regulation of genetic counselors pursuant to

this Act. The committee shall also make recommendations to the board regarding rules promulgated pursuant to this Act.

HB 1097 An Act to provide for certain filing fees and surcharges in certain civil cases and to provide exemptions in certain cases.

Section 1. That § 16-2-29 be amended to read as follows:

16-2-29. The clerk of courts shall charge and collect the following fees:

- (1) For the probate of an estate, seventy-five dollars;
- (2) For all service connected with the preparation and transmission of a settled record to the Supreme Court, including the remittitur from the Supreme Court, fifty dollars;
- (3) For any of the following, twenty-five dollars:
 - (a) Civil cases filed for jury or court trial;
 - (b) Guardianship or conservatorship actions, adoption cases, termination of life estates;
 - (c) Cases to determine amount of inheritance tax in estates in which real and personal property is transferred in contemplation of death;
 - (d) Default actions to quiet title to real property;
 - (e) Default cases involving garnishment proceedings;
 - (f) Dissolutions of corporations;
 - (g) Foreclosure actions;
 - (h) Special administration proceedings;
 - (i) Summary administration proceedings;
 - (j) Appeals to the circuit court from an action of a political subdivision of the state or from an action of the state or its officers, boards, agencies, and commissions; or
 - (k) All matters not otherwise provided for in this section;
- (4) For any of the following, fifty dollars:

- (a) Petitions and motions to modify final child support orders, except if the petitioner or moving party is a recipient of assistance benefits pursuant to Title 28;
- (b) Petitions and motions to modify final child custody orders;
- (c) Petitions and motions to modify final visitation orders;
- (d) Petitions and motions to modify final spousal support orders;
- (5) For any of the following, five dollars:
 - (a) Issuing a transcript of a judgment;
 - (b) Filing and docketing a transcript of a judgment;
 - (c) Issuing and docketing an execution, commission, or writ;
 - (d) Filing a special execution; or
 - (e) Renewing a judgment according to § 15-16-33;
- (6) For any of the following, two dollars:
 - (a) Reproducing an authenticated, exemplified, or double certificate of a record on file in the clerk's office;
 - (b) Certifying a document not excepted by subdivision (7) of this section;
 - (c) Issuing a subpoena in a civil case; or
 - (d) Safekeeping or filing of a will;
- (7) All true and correct copies of any original record or paper furnished by the attorney of record or the personal representative qualified to act in any of the following cases which are necessary for the completion of the case shall be certified at no extra charge for the certification:
 - (a) Guardianship or conservatorship actions, adoption cases, termination of life estates, trusts, probate actions;
 - (b) Cases to determine amount of inheritance tax in estates in which real and personal property is transferred in contemplation of death; and
 - (c) Divorce actions;
- (8) For a facsimile transmission of any opinion, record, or paper from an active

or inactive file in the clerk's custody, one dollar per page, but the minimum charge is five dollars. Fees collected pursuant to this subdivision shall be deposited into the unified judicial system court automation fund.

No fee for filing, docketing, issuing, recording, certifying, or searching, or other fee or commission, may be required of the state, any foreign state, or the federal government, or its officers, boards, agencies, and commissions, or its political subdivisions, in any action or proceeding commenced by the state or a political subdivision. In addition, no fee for record searches may be required of any agency of the federal government which is charged with law enforcement or investigatory duties under federal law.

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

Section 2. That § 16-2-39 be amended to read as follows:

16-2-39. In each civil action, proceeding for judicial remedy, and probate proceeding, the clerk of courts shall collect the sum of twenty dollars as a unified judicial system court automation surcharge. The twenty-dollar surcharge does not apply to a small claims action. In each small claims action, the clerk of courts shall collect as a unified judicial system court automation surcharge the sum of six dollars if the amount in controversy is less than four thousand dollars and eight dollars if the amount in controversy is four thousand dollars or more. The surcharge shall be collected from the plaintiff or person instituting the action or proceeding at the time of filing the first paper. The surcharge shall be collected by the clerk in the manner in which other fees are collected. However, no surcharge may be collected for any petition or motion to modify final orders for child support, child custody, child visitation, or spousal support or in any civil action or proceeding for judicial remedy commenced by the state, a county, a municipality, or a school district.

Section 3. That § 14-6-1 be amended to read as follows:

14-6-1. Upon order of the presiding judge of the circuit court made and filed in the office of the clerk of courts of any county within the circuit of which such county is a part,

the clerk of courts of such county shall collect in each civil action, proceeding for judicial remedy, and probate proceeding, as a county lawbook and county law library fee, a sum of two dollars in actions commenced pursuant to chapter 15-39 and a sum of five dollars in all other civil actions, proceedings for judicial remedy, and probate proceedings. The clerk shall collect the fee in the manner in which other fees are collected from the plaintiff or person instituting such action or proceeding, at the time of filing the first paper in such action or proceeding. However, no surcharge may be collected for any petition or motion to modify final orders for child support, child custody, child visitation, or spousal support or in any civil action or proceeding for judicial remedy commenced by the state, a county, a municipality, or a school district.

Section 4. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as follows:

For any petition or motion to modify final orders for child support, child custody, child visitation, or spousal support, the clerk of courts shall collect the sum of fifty dollars as a commission on equal access to our courts surcharge. The surcharge shall be collected from the person filing the motion or petition at the time of filing. The surcharge shall be collected by the clerk in the manner in which other fees are collected. No surcharge may be collected in any civil action or proceeding commenced by the state, county, a municipality, or a school district. The surcharge may be waived pursuant to the provisions of § § 16-2-29.2 and 16-2-29.3.

Section 5. That chapter 16-2 be amended by adding thereto a NEW SECTION to read as follows:

The clerk of courts shall collect all amounts due under section 4 of this Act and transmit such amounts monthly to the state treasurer who shall place such amounts received into the equal access to our courts fund.

HB 1101 An Act to allow affidavits for change of judge in habeas corpus actions.

Section 1. That § 15-12-21 be amended to read as follows:

15-12-21. Unless the right is waived or is denied by this chapter, an affidavit for change of a judge or magistrate may be filed in any action pending in the court whether originating therein or pending upon appeal from an inferior court or tribunal to the circuit court. No affidavit for such change may be filed in a criminal action prior to the completion of the preliminary hearing or waiver thereof or in any proceeding for contempt committed in the presence of the court.

HB 1104 An Act to authorize a sentencing court to impose consecutive revocations of hunting, fishing, or trapping privileges under certain conditions.

Section 1. That § 41-6-74.1 be amended to read as follows:

41-6-74.1. At the time of conviction for any one of the following offenses:

- (1) Violation of any game and fish law punishable as a Class 1 misdemeanor;
 - (2) Violation of § 41-8-37, 41-9-1.2, or 41-8-17 except for a landowner, occupant, or accompanying guests of the landowner or occupant on the owner's or occupant's land or a person employed by the Department of Game, Fish and Parks in the performance of the person's duty, or 41-12-12;
 - (3) Violation of any other statute or rule pertaining to fishing, hunting, or possessing game or game fish without a license or during a closed season; or
 - (4) Taking or possessing in excess of the lawful daily or possession limit:
 - (a) One or two paddlefish;
 - (b) Two or three turkeys;
 - (c) Four to six, inclusive, of any one game fish as regulated other than paddlefish; or
 - (d) Four to six, inclusive, of any one small game animal as regulated;
- the person's applicable hunting, fishing, or trapping privileges in South Dakota are

automatically revoked without further hearing for a period of one year following date of conviction. The sentencing court may impose consecutive revocations of the person's hunting, fishing, or trapping privileges if the person is convicted of two or more violations for which revocation of the privileges is authorized under this title.

Section 2. That § 41-6-74.2 be amended to read as follows:

41-6-74.2. At the time of conviction for taking or possessing in excess of the lawful daily or possession limit any of the following:

- (1) Three or more paddlefish;
- (2) Four or more turkeys;
- (3) Seven or more of any one game fish as regulated other than paddlefish;
- (4) Seven or more of any one small game animal as regulated; or
- (5) Two or more big game animals, except turkeys;

the person's applicable hunting, fishing, or trapping privileges in South Dakota are automatically revoked without further hearing for a period of three years following date of conviction. The sentencing court may impose consecutive revocations of the person's hunting, fishing, or trapping privileges if the person is convicted of two or more violations for which revocation of the privileges is authorized under this title.

Section 3. That § 41-9-1.1 be amended to read as follows:

41-9-1.1. Except for controlled access facilities as defined in § 31-8-1, interstate highways, unimproved section lines not commonly used as public rights-of-way, and highways within parks or recreation areas or within or adjoining public shooting areas or game refuges posted for restriction of an applicable use as hereinafter set forth by the Department of Game, Fish and Parks, § 41-9-1 does not apply to fishing, trapping, or hunting on highways or other public rights-of-way within this state that meet the requirements of § 41-9-1.3. For purposes of this section, hunting on highways or other public rights-of-way includes:

- (1) The shooting at or taking by legal methods of small game, except mourning

dove, that are located within the boundaries of the highway or public right-of-way;

(2) The shooting at or taking by legal methods of small game, except mourning dove, that are in flight over private land if the small game has either originated from or has taken flight from the highway or public right-of-way or if the small game is in the process of flying over the highway or public right-of-way.

If subdivision (2) of this section is declared by an advisory opinion or adjudication of the South Dakota Supreme Court to be a taking of private property requiring compensation, subdivision (2) is void.

No person, except the adjoining landowner or any person receiving written permission from the adjoining landowner, may use such highways or rights-of-way for the purposes of hunting defined in this title within a six hundred sixty-foot safety zone surrounding an occupied dwelling, a church, schoolhouse, or livestock. Neither the person discharging a firearm at small game nor the small game being shot at may be within the safety zone. No person, except the adjoining landowner or any person receiving written permission from the adjoining landowner, may use such highways or rights-of-way for the purpose of trapping within six hundred sixty feet of an occupied dwelling, church, or schoolhouse. A violation of this section is a Class 2 misdemeanor. If any person is convicted of knowingly discharging a firearm within six hundred sixty feet of any occupied dwelling, church, or schoolhouse for which such distance has been clearly and accurately marked and posted, the court shall, in addition to any other penalty, revoke the person's hunting privileges for a period of one year from the date of conviction. The sentencing court may order the revocation of hunting privileges authorized by this section to be served consecutively with any other revocation of the person's hunting privileges imposed for a violation for which the person is convicted and for which revocation of the privileges is authorized under this title.

Section 4. That § 41-9-8 be amended to read as follows:

41-9-8. Any person who knowingly enters or remains on private property for the purpose of hunting, fishing, or trapping, in violation of § 41-9-1 or 41-9-2, shall lose

hunting, trapping, or fishing privileges for one year following the conviction. The sentencing court may order the revocation of hunting, fishing, or trapping privileges authorized by this section to be served consecutively with any other revocation of the person's hunting, fishing, or trapping privileges imposed for a violation for which the person is convicted and for which revocation of the privileges is authorized under this title. If the person is the holder of a license to hunt, trap, or fish, the court shall require the license holder to surrender and deliver the license to the court to be returned to the Department of Game, Fish and Parks. For the purpose of this section, the term, guilty, has the same meaning as the term, conviction, in § 32-12-53.

Unarmed retrieval of lawfully taken small game from either private land or land controlled by the Department of Game, Fish and Parks or other public lands, is not a crime or petty offense, if the retrieval of the small game does not involve the use of a motor vehicle.

It is a Class 2 misdemeanor for any person, while engaged in the retrieval of small game from private land without permission of the landowner or lessee of the land, to intentionally drive or flush any small game located on the land toward other hunters of the retriever's same hunting group located on other parcels of land or rights-of-way. It is a Class 2 misdemeanor for any person, who is a member of the same hunting group as the person performing the retrieval without the permission of the landowner or lessee of the land, to intentionally discharge a firearm at small game, except waterfowl, that originates from the private land during the retrieval.

This section does not limit the civil remedies available to any landowner.

HB 1122 An Act to require that prosecutors notify victims of domestic abuse regarding the status of their case.

Section 1. That § 25-10-38 be amended to read as follows:

25-10-38. Any report made pursuant to § 25-10-36 shall be forwarded to the

appropriate prosecutor within ten days of making the report. The prosecutor shall, within five days of receipt of the report, notify the victim either orally or in writing of the status of the case. If the state's attorney decides not to prosecute, the prosecutor shall inform the victim of the reasons.

HB 1134 An Act to require notice of the cost of certain public notices.

Section 1. If the publication of any notice, minutes, bids, document, or other information is required by law by the state or any municipality, county, or school district, the public notice shall bear an inscription listing the approximate cost of the newspaper publication. The inscription shall be printed at the top or bottom of the public notice and in the same type size as the body of the public notice.

HB 1153 An Act to revise the elements of the crime of indecent exposure involving a child, to revise the elements of the crime of indecent exposure, and to establish the crime of private indecent exposure.

Section 1. That § 22-24-1.3 be amended to read as follows:

22-24-1.3. If any person, eighteen years of age or older, with the intent to arouse or gratify the sexual desire of any person, intentionally exposes his or her genitals to a child, thirteen years of age or younger, that person is guilty of the crime of indecent exposure involving a child. Indecent exposure involving a child is a Class 6 felony. A second or subsequent conviction for indecent exposure involving a child is a Class 5 felony.

Section 2. That § 22-24-1.2 be amended to read as follows:

22-24-1.2. A person commits the crime of indecent exposure if, with the intent to arouse or gratify the sexual desire of any person, the person exposes his or her genitals in a public place, or in the view of a public place, under circumstances in which that person knows that person's conduct is likely to annoy, offend, or alarm another person. A violation of this section is a Class 1 misdemeanor. However, if such person has been previously

convicted of a felony violation of § 22- 22-1, 22-22-7, or 22-24A-3, that person is guilty of a Class 6 felony. Any person convicted of a third or subsequent violation of this section is guilty of a Class 6 felony.

Section 3. That chapter 22-24 be amended by adding thereto a NEW SECTION to read as follows:

A person commits the crime of private indecent exposure if:

- (1) The person exposes the genitals of the person with the intent to arouse or gratify the sexual desire of the person or another person;
- (2) The person is in a place where another person has a reasonable expectation of privacy;
- (3) The person is in view of the other person;
- (4) The exposure reasonably would be expected to annoy, offend, or alarm the other person; and
- (5) The person knows that the other person did not consent to the exposure.

Private indecent exposure is a Class 1 misdemeanor.

This section does not apply to a person who commits the act described in this section if the person cohabits with or is involved in a sexually intimate relationship with the other person.

HB 1155 An Act to require that the testing of blood samples of suspects of sexual assault be initiated within a specified time.

Section 1. That § 23A-35B-3 be amended to read as follows:

23A-35B-3. A victim or a law enforcement officer may request in writing to the state's attorney that the defendant or the juvenile be tested for blood-borne pathogen infection by the Department of Health and that a search warrant be obtained for the purpose of taking a blood sample from the defendant or the juvenile for testing for such infection. The written request shall state that the victim or law enforcement officer believes there was an

exchange of blood, semen, or other bodily fluids from the defendant or the juvenile to the victim or law enforcement officer and shall state the factual basis for believing there was such an exchange. The court shall hold a hearing at which both the victim or law enforcement officer and the defendant or the juvenile may be present. If the court finds probable cause to believe that the defendant or the juvenile committed the offense and that there was an exchange of blood, semen, or other bodily fluids from the defendant or the juvenile to the victim or from the defendant or the juvenile to the law enforcement officer, the court may order a search warrant for the purpose of taking a blood sample from the defendant or the juvenile for testing for blood-borne pathogen infection. If the court orders a search warrant, the Department of Health shall initiate the test for blood-borne pathogen infection within forty-eight hours after the department receives the blood sample.

HB 1163 An Act to provide for excusing certain elderly persons from jury duty upon request.

Section 1. That chapter 16-13 be amended by adding thereto a NEW SECTION to read as follows:

Any person eighty years of age or older may request to be excused from jury duty. The judge shall give substantial weight to the person's request to be relieved from jury duty, balancing the request with the need to impanel a jury.

HB 1166 An Act to provide for DNA testing for certain inmates for the purposes of determining whether they may have been wrongfully convicted.

Section 1. Upon a written motion by any person who has been convicted of a felony offense, the court that entered the judgment of conviction for the felony offense shall order DNA testing of specific evidence if the court finds that all of the following apply:

- (1) The petitioner asserts, under penalty of perjury, that the petitioner is actually innocent of the felony offense for which the petitioner is under a sentence of imprisonment

or death;

(2) The petitioner's conviction is final under chapter 23A-32;

(3) The petitioner has exhausted any claim for relief under chapter 21-27 or 28 U.S.C. § 2254;

(4) The specific evidence to be tested was secured in relation to the investigation or prosecution of the felony offense for which the petitioner was convicted;

(5) The specific evidence was either:

(a) Not previously subjected to DNA testing and the petitioner did not:

(i) Knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of this Act; or

(ii) Knowingly fail to request DNA testing of that evidence in a prior petition for relief under chapter 21-27 or 28 U.S.C. § 2254; or

(b) Previously subjected to DNA testing and the petitioner is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing;

(6) The petitioner shows good cause for the failure to request DNA testing of the specific evidence at the time of trial;

(7) The specific evidence to be tested exists, is in the possession of the state, and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing;

(8) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices;

(9) The petitioner identifies a theory of defense that:

(a) Is consistent with an affirmative defense presented at trial; or

(b) Would establish the actual innocence of the petitioner of the felony offense referenced in the petitioner's assertion under subdivision (1); and

(10) If the petitioner was convicted following a trial, the identity of the perpetrator was at issue in the trial.

Section 2. Upon the receipt of the petitioner's written motion filed under section 1 of this Act, the court shall:

(1) Notify the attorney general and the state's attorney who prosecuted the case resulting in the petitioner's conviction; and

(2) Allow the state twenty days from the receipt of notice to respond to the motion.

Section 3. The court may not appoint counsel for an indigent petitioner under this Act. However, the court may refer requests for DNA testing to the Innocence Project in South Dakota or such volunteer attorney as the State Bar of South Dakota may designate.

Section 4. Nothing in this Act precludes a petitioner from proceeding with privately retained counsel.

Section 5. Upon receiving notice from the court that a written motion has been made, the attorney general or the state's attorney who prosecuted the case, shall take all reasonable actions necessary to ensure that all evidence which was collected in connection with the investigation or prosecution of the case, and which remains in the actual or constructive custody of the state or any of its political subdivisions, is preserved pending completion of the proceedings under this Act.

Section 6. The court shall direct that any DNA testing ordered pursuant to section 1 of this Act be carried out by the South Dakota Division of Criminal Investigation. However, the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

Section 7. Nothing in this Act prohibits a convicted person and the state from consenting to and conducting post-conviction DNA testing by agreement of the parties, without filing a motion for post-conviction DNA testing pursuant to this Act.

Section 8. The results of any DNA testing ordered pursuant to section 1 of this Act shall be disclosed to the court, the petitioner, and the state.

Section 9. The state shall submit any test results relating to the DNA of the petitioner to the State DNA Database.

Section 10. If the DNA test results obtained pursuant to this Act are inconclusive or show that the petitioner was the source of the DNA evidence, the DNA sample of the petitioner shall be retained in the State DNA Database.

Section 11. If the DNA test results obtained pursuant to this Act exclude the petitioner as the source of the DNA evidence, and a comparison of the DNA sample of the petitioner results in a match between the DNA sample of the petitioner and another offense, the attorney general shall notify the appropriate agency and preserve the DNA sample of the petitioner.

Section 12. If DNA test results obtained pursuant to this Act are inconclusive, the circuit court shall deny the petitioner relief.

Section 13. If DNA test results obtained pursuant to this Act show that the petitioner was the source of the DNA evidence, the court shall:

- (1) Deny the petitioner relief; and
- (2) On motion of the state:
 - (a) Assess the petitioner the cost of any DNA testing carried out pursuant to this Act; and
 - (b) Order that the finding be forwarded to the South Dakota Board of Pardons and Paroles so that the board may consider the finding in reviewing any subsequent parole application submitted by the petitioner.

Section 14. In any prosecution of the petitioner pursuant to this Act for false assertions or other conduct in proceedings pursuant to this Act, the court, upon conviction of the petitioner, shall sentence the petitioner to a sentence that runs consecutively to any other term of imprisonment the petitioner is serving.

Section 15. If DNA test results obtained pursuant to this Act exclude the petitioner as the source of the DNA evidence, the petitioner may file a motion for a new trial. The court shall establish a reasonable schedule for the petitioner to file such motion for a new trial and for the state to respond to the motion for a new trial.

Section 16. The court shall grant the motion of the petitioner for a new trial if the DNA test results, when considered with all other evidence in the case, establish by compelling evidence that a new trial would result in the acquittal of the felony offense, as referenced in section 1 of this Act, for which the petitioner is under a sentence of imprisonment.

Section 17. Nothing in this Act provides a basis for relief in any state or federal habeas corpus proceeding.

HB 1184 An Act to clarify provisions dealing with the initiative process.

Section 1. That § 12-13-25 be amended to read as follows:

12-13-25. The sponsors of each initiative or initiated amendment to the Constitution shall submit a copy of the initiative or initiated amendment to the Constitution to the director of the Legislative Research Council for review and comment before it may be circulated for signatures. The director shall review each submitted initiative or initiated amendment to the Constitution to determine if the requirements of § 12-13-24 are satisfied. Within fifteen days of receipt of an initiative or initiated amendment to the Constitution, the director shall provide written comments on the initiative or initiated amendment to the Constitution to the sponsors of the initiative or initiated amendment, the attorney general, and the secretary of state for the purpose of assisting the sponsors in complying with § 12-13-24. The sponsors may, but are not required to, amend the initiative or initiated amendment to the Constitution to comply with the director's comments.

Section 2. That chapter 12-13 be amended by adding thereto a NEW SECTION to read as follows:

Following receipt of the written comments of the director of the Legislative Research

Council, the sponsors shall submit a copy of the initiative or initiated amendment to the Constitution in final form, to the attorney general. The attorney general shall prepare an attorney general's statement which consists of a title and explanation. The title shall be a concise statement of the subject of the proposed initiative or initiated amendment to the Constitution. The explanation shall be an objective, clear, and simple summary to educate the voters of the purpose and effect of the proposed initiated measure or initiated amendment to the Constitution. The attorney general shall include a description of the legal consequences of the proposed amendment or initiated measure, including the likely exposure of the state to liability if the proposed amendment or initiated measure is adopted. The explanation may not exceed two hundred words in length. The attorney general shall file the title and explanation with the secretary of state and shall provide a copy to the sponsors within sixty days of receipt of the initiative or initiated amendment to the Constitution.

If the petition is filed as set forth in § 2-1-2, the attorney general shall deliver to the secretary of state before the third Tuesday in May a simple recitation of a "Yes" or "No" vote. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed by the recitation.

Section 3. That § 12-13-26 be amended to read as follows:

12-13-26. The secretary of state may not accept any initiative or initiated amendment to the Constitution unless such initiative or initiated amendment to the Constitution has been submitted to the director of the Legislative Research Council and the director has reviewed and commented on such initiative or initiated amendment to the Constitution, and unless the attorney general has filed the title and explanation of the initiative or initiated amendment to the Constitution with the secretary of state.

Section 4. That § 12-13-9.2 be amended to read as follows:

12-13-9.2. If the proponents or opponents of a proposed amendment to the Constitution, initiated measure, or referred measure believe that the attorney general's

statement does not satisfy the requirements of § 12-13-9 or section 2 of this Act, they shall, within seven days of delivery of the statement to the secretary of state, file an action in circuit court challenging the adequacy of the statement. The action takes precedence over other cases in circuit court and a final order shall be filed within fifteen days of the commencement of the action. Any party appealing the circuit court order to the Supreme Court shall file a notice of appeal within five days of the date of the circuit court order.

Section 5. That § 2-1-6.2 be amended to read as follows:

2-1-6.2. The petition as it is to be circulated for any initiative or initiated constitutional amendment shall contain the full text of the measure, the date of the general election at which the initiated law or initiated constitutional amendment is to be submitted, and the title and explanation as prepared by the attorney general, accompanied by the names and addresses of the petition sponsors and shall be filed with the secretary of state prior to circulation for signatures. The circulator shall provide to each person who signs the petition a copy of the explanation as prepared by the attorney general. The petition as it is to be circulated for a referred law shall contain the title of the referred law, the effective date of the referred law, and the date of the general election at which the referred law is to be submitted. The petition shall be accompanied by the names and addresses of the petition sponsors and shall be filed with the secretary of state prior to circulation for signatures. The signer's post office box number may be given in lieu of a street address if the signer lives within a municipality of the second or third class. The form of the petitions shall be prescribed by the State Board of Elections. For any initiated measure or initiated constitutional amendment petition, no signatures may be obtained more than twenty-four months preceding the general election that was designated at the time of filing of the full text. An initiative petition and an initiated constitutional amendment petition shall be filed with the secretary of state by the date set forth in § 2-1-2 or 2-1-2.1, as applicable. All sections of any petition filed under this chapter shall be filed with the secretary of state simultaneously together with a sworn affidavit on forms promulgated by the State Board of

Elections, signed by two-thirds of the sponsors stating that the documents filed constitute the entire petition and to the best of their knowledge contain a sufficient number of signatures.

Section 6. That § 2-1-6.3 be repealed.

Section 7. That § 2-1-7 be amended to read as follows:

2-1-7. Every petition proposing a measure shall be signed in person by the petitioners.

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

2-1-2. The petition shall be filed in the Office of the Secretary of State by the first Tuesday in November of the year prior to a general election year for submission to the electors at the next general election.

Section 9. That chapter 2-1 be amended by adding thereto a NEW SECTION to read as follows:

A petition of the voters proposing an initiated measure may be withdrawn not later than one hundred twenty days prior to the next general election, if not less than two-thirds of the named sponsors file with the secretary of state, in writing, their request for withdrawal of the question from the ballot. The secretary of state shall attach to the petitions on file the request for withdrawal and shall take no other action thereon.

Section 10. That § 12-13-9 be amended to read as follows:

12-13-9. Before the third Tuesday in May, the attorney general shall deliver to the secretary of state an attorney general's statement for each amendment to the Constitution proposed by the Legislature, and any referred measure from an odd year. The attorney general's statement for each referred measure from an even year shall be delivered to the secretary of state before the second Tuesday in July. The attorney general's statement shall be written by the attorney general and shall consist of a title, an explanation, and a clear and simple recitation of the effect of a "Yes" or "No" vote. The title shall be a concise statement of the subject of the proposed amendment or referred measure authored by the attorney general. The explanation shall be an objective, clear, and simple summary to

educate the voters of the purpose and effect of the proposed amendment to the Constitution or the referred law. The attorney general shall include a description of the legal consequences of the proposed amendment or the referred law, including the likely exposure of the state to liability if the proposed amendment or the referred law is adopted. The explanation may not exceed two hundred words in length. On the printed ballots, the title shall be followed by the explanation and the explanation shall be followed by the recitation.

Section 11. This Act is effective July 1, 2010. The provisions of this Act do not apply to any initiative petition or initiated constitutional amendment petition filed with the secretary of state for the 2010 general election.

HB 1207 An Act to provide for the reduction of certain sentences upon provision of substantial assistance from the recipient.

Section 1. That chapter 23A-31 be amended by adding thereto a NEW SECTION to read as follows:

Upon the motion of the prosecuting attorney, the court may reduce a sentence if the defendant has provided substantial assistance in investigating or prosecuting another person.

Whenever granting a sentence reduction pursuant to this section, the court is not prohibited from reducing the sentence to a level below the minimum sentence provided in statute.

HB 1240 An Act to prohibit smoking tobacco or carrying lighted tobacco products in certain places and to require certain persons to inform violators of the prohibition.

Section 1. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

No person may smoke tobacco or carry any lighted tobacco product in any public place or place of employment. A violation of this section is a petty offense.

Section 2. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

Any person that owns, manages, operates, or otherwise controls a public place or place of employment shall inform persons violating section 1 of this Act of the provisions thereof. A violation of this section is a petty offense.

Section 3. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

Terms used in this Act mean:

- (1) "Enclosed area," any space between a floor and a ceiling that is enclosed, exclusive of doorways, on all sides by permanent or temporary walls or windows;
- (2) "Place of employment," any enclosed area under the control of a public or private employer;
- (3) "Public place," any enclosed area to which the public is invited or in which the public is permitted.

Section 4. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 1 to 3, inclusive, of this Act do not apply to any private residence unless the private residence is used for day care.

Section 5. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 1 to 3, inclusive, of this Act do not apply to any sleeping rooms in any hotel or lodging establishment licensed pursuant to subdivision 34-18-1(6) or (7), respectively, if the rooms are rented to guests. Any sleeping room in which smoking is allowed shall be posted as a smoking room.

Section 6. That chapter 34-46 be amended by adding thereto a NEW SECTION to read

as follows:

The provisions of sections 1 to 3, inclusive, of this Act do not apply to any establishment licensed pursuant to subdivision 35-4-2(4), (6), (12), or (16) that was in compliance on January 1, 2009, with, and maintains compliance with, the following requirements:

(1) Generates ten percent or more of its annual gross income from the sale of cigars. For the purposes of this section, a cigar is any individual roll of tobacco that has a wrapper or cover consisting only of tobacco, that measures a number forty ring size or larger, and that is sold without a filter;

(2) Has a humidor on the premises; and

(3) Is enclosed by solid walls or windows, a ceiling, and a solid door and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas and smoke is not backstreamed into nonsmoking areas.

Any establishment meeting the requirements of this section may permit the smoking of cigars and any premium tobacco product purchased on the premises. However, no establishment may permit the smoking of any other tobacco product on the premises. The establishment shall post a notice of the prohibition.

Any establishment meeting the requirements of this section shall annually report to the Department of Revenue and Regulation, on a form prescribed by the department, the revenue generated from the sale of cigars as a percentage of annual gross income.

Section 7. That chapter 34-46 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of sections 1 to 3, inclusive, of this Act do not apply to any retail tobacco store that meets the following requirements:

(1) Generates sixty-five percent of its annual gross income from the sale of tobacco, tobacco products, and accessories for such products;

(2) Is enclosed by solid walls or windows, a ceiling, and a solid door that provides egress to the outdoors; and

(3) Does not allow the consumption of alcoholic beverages on the premises.

Any retail tobacco store meeting the requirements of this section shall annually report to the Department of Revenue and Regulation, on a form prescribed by the department, the revenue generated from the sale of tobacco, tobacco products, and accessories for such products as a percentage of annual gross income.

Section 8. That § 22-36-2 be repealed.

Section 9. That § 22-36-3 be repealed.

Section 10. That § 22-36-4 be repealed.

HB 1260 An Act to require that a request for proposals be issued for certain state contracts for professional services.

Section 1. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, professional services, means services arising out of a vocation, calling, occupation, or employment involving specialized knowledge, labor, or skill, and the labor or skill involved is predominantly mental or intellectual, rather than physical or manual.

Section 2. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

For the purposes of this Act, the term, request for proposals, means the document or publication whereby a state agency solicits proposals for a professional services contract.

Section 3. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

No agency of the state may award or renew a contract for professional services exceeding fifty thousand dollars without complying with the procedures set forth in this Act. Any agency seeking such professional services shall issue a request for proposals. The agency shall publish any request for proposals issued pursuant to this section on the

electronic procurement system maintained by the Bureau of Administration. The request for proposals shall include the procedures for the solicitation and award of the contract.

Section 4. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

The request for proposals shall state the relative importance of evaluation criteria to be used in the ranking of prospective contractors. The agency shall include the following evaluation criteria in any request for proposals:

- (1) Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
- (2) Resources available to perform the work, including any specialized services, within the specified time limits for the project;
- (3) Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
- (4) Availability to the project locale;
- (5) Familiarity with the project locale;
- (6) Proposed project management techniques; and
- (7) Ability and proven history in handling special project constraints.

Section 5. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

The agency and the highest ranked contractor shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule. The compensation level paid shall be reasonable and fair to the agency, as determined by the agency. If the agency and the highest ranked contractor are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with

the contractor. The agency may then negotiate with the next highest ranked contractor. The negotiation process may continue through successive contractors, according to agency ranking, until an agreement is reached or the agency terminates the contracting process.

Section 6. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

A register of proposals shall be prepared and maintained by any state agency issuing a request for proposals for a professional service contract. The register shall contain the names of any person whose qualifications were considered and the name of the person that was awarded the contract. Any professional service contract and the documentation which was the basis for the contract shall be public except for proprietary information which shall remain confidential. The qualifications and any other documentation of any person not issued a contract shall remain confidential.

Section 7. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act do not apply to contracts issued for:

(1) Services of such a unique nature that the contractor selected is clearly and justifiably the only practicable source to provide the service. Determination that the contractor selected is justifiably the sole source is based on either the uniqueness of the service or sole availability at the location required;

(2) Emergency services necessary to meet an urgent or unexpected requirement or when health and public safety or the conservation of public resources is at risk;

(3) Services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(4) Services for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(5) Services involving state or federal financial assistance passed through by a state agency to a political subdivision;

(6) Medical services and home and community-based services;

(7) Services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public; or

(8) Services to be provided by entertainers for the state fair and other events.

Section 8. That chapter 5-18 be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provisions of law, an agency that is required to issue a decision in a contested case proceeding in one year or less may increase its statutory deadline for issuing the agency decision by sixty days if the agency seeks to enter into a professional services contract covered by this Act.

HB 1271 An Act to authorize the South Dakota Building Authority and the Department of Corrections to provide for the purchase, design, construction, and equipping of a combined minimum security/parole facility in Rapid City for the Department of Corrections.

Section 1. It is in the public interest that the South Dakota Building Authority contract for the acquisition of land and buildings, the construction, completion, furnishing and equipping, including heating, air conditioning, plumbing, water, sewer, electric facilities, sidewalks, parking, landscaping, architectural and engineering services, removal of any existing improvements and such other services or actions as may be required to provide for a minimum security/parole facility in Rapid City, South Dakota, all at the estimated cost of six million dollars. The South Dakota Building Authority may finance up to six million dollars of the costs described in this section through the issuance of revenue bonds in accordance with this Act and chapter 5-12.

Section 2. The authorizations granted under section 1 of this Act, and all necessary appropriations required to finance and to complete such project, remain effective through June 30, 2015.

Section 3. No indebtedness, bond, or obligation incurred or created under the authority of this Act may become a lien, charge, or liability against the State of South Dakota, or against the property or funds of the State of South Dakota within the meaning of the Constitution or statutes of the state.

Section 4. The Building Authority and Department of Corrections may accept, transfer, and expend any property or funds obtained for these purposes from federal sources, gifts, contributions, or any other source, all of which shall be deemed appropriated to the project authorized by this Act in addition to the amounts otherwise authorized by this Act.

Section 5. The administration of the design and construction of the projects authorized in this Act shall be under the general charge and supervision of the Bureau of Administration as provided in chapter 5-14. The secretary of the Department of Corrections and the executive secretary of the Building Authority, or their designees, shall approve vouchers and the state auditor shall draw warrants to pay expenditures authorized by this Act.

Section 6. The Department of Corrections may make and enter into a lease agreement with the Building Authority and make rental payments under the terms thereof pursuant to chapter 5-12, for the purposes of this Act.

Section 7. The sale of bonds or utilization of other mechanisms to fund the purchase or renovation of the property located at the corner of Homestead Street and Elk Vale Road in Rapid City, Pennington County, South Dakota, as legally described in the agreement dated February 6, 2009, executed by the State of South Dakota through its secretary of the Department of Corrections, is hereby expressly rejected and approval therefor is likewise denied.

Section 8. Prior to purchasing any property with the proceeds of the revenue bonds described in section 1, the secretary of the Department of Corrections shall conduct public

meetings to solicit input from and share information with citizens, business owners, and school administrators located within two miles of the property to be purchased.

Tracked Legislation That Failed

Bill Number

SB 71	An Act to broaden the application of the public indecency and indecent exposure statutes.
SB 79	An Act to provide for the primary enforcement of seat belt laws and to define passenger buses.
SB 92	An Act to require the physical presence of any physician scheduled to perform an abortion at the site of the abortion procedure on the day prior to the abortion procedure.
SB 103	An Act to provide for the primary enforcement of the seat belt law.
SB 137	An Act to require the sale of aircraft under the control of the Department of Transportation and to declare an emergency.
SB 146	An Act to increase the penalty for solicitation of a minor.
SB 152	An Act to prohibit the physical presence of registered sex offenders at certain day care, preschool, and elementary school premises under most circumstances and to provide a penalty therefor.
SB 156	An Act to revise the scope of certain provisions related to hate crimes.
SB 157	An Act to provide for the participation of independent voters in primary elections.
SJR 1	A Joint Resolution to propose a constitutional amendment to authorize the Legislature on the advice of the Governor, to forestall certain threats from interstate gaming.
HB 1003	An Act to clarify the application of common law trespass and to provide for the recovery of damages against trespassers.
HB 1078	An Act to prohibit acts of terrorism against persons engaged in a state university activity involving live animals.
HB 1096	An Act to provide for a temporary reduction of legislator salaries and to declare an emergency.
HB 1102	An Act to prohibit certain contractual provisions that restrict legal actions to locations outside the state.

Bill Number

- HB 1105 An Act to require public high school students to perform acts of volunteerism in order to receive a high school diploma.
- HB 1112 An Act to establish certain restrictions and requirements related to encumbrances on wind easements.
- HB 1113 An Act to require the filing of the complete contents of wind easement agreements with the register of deeds.
- HB 1125 An Act to prohibit the use of certain wireless communications devices while driving.
- HB 1127 An Act to provide safe legal access to medical marijuana for certain qualified persons.
(The Attorney General's Office **actively opposed** HB 1127).
- HB 1128 An Act to allow a medical necessity to be used as a defense in certain cases involving the possession or use of marijuana.
(The Attorney General's Office **actively opposed** HB 1128).
- HB 1146 An Act to prohibit the torture of animals and to provide certain penalties therefor.
- HB 1156 An Act to provide for the establishment of a task force to study human trafficking.
- HB 1157 An Act to provide for the establishment of a task force to study issues relating to domestic abuse and sexual assault and to declare an emergency.
- HB 1161 An Act to increase the monetary amount required to prove financial responsibility for accidents arising out of the ownership, maintenance, or use of a vehicle.
- HB 1187 An Act to provide for legislative redistricting based on a Senate of twenty-five members.
- HB 1188 An Act to require that five percent of the qualified electors in one-half of the counties sign initiative and referendum petitions.
- HB 1189 An Act to revise certain provisions regarding the notice of meetings of public bodies.

Bill Number

- HB 1208 An Act to establish certain presumptions concerning the results of blood, breath, and urine tests administered in connection with driving under the influence arrests.
- HB 1225 An Act to require certain authorization for the installation of certain fixtures on rental property and to establish penalties related thereto.
- HB 1228 An Act to require mopeds used on public highways to be titled and licensed as a motorcycle and to increase license fees for motorcycles.
- HB 1257 An Act to provide for the right to possess a firearm on the campuses of public institutions of higher education.
- HB 1264 An Act to provide for the utilization of conditional early release bonds in regard to certain furloughs and paroles.
- HB 1277 An Act to permit municipalities and counties to assess surcharges against intoxicated persons responsible for certain expenditures of local resources.
- HB 1287 An Act to permit evidence of the defendant's commission of other acts of child molestation to be admissible in certain child molestation cases.
- HB 1288 An Act to prohibit certain public officials from having an unlawful interest in a public contract and to provide certain penalties therefor.
- HB 1292 An Act to provide for the impoundment of certain motor vehicles for failure to maintain liability insurance and driving with a suspended or revoked driver license.
- HB 1296 An Act to authorize the use of tribal identification cards as the equivalent of certain state-issued documents for identification purposes.