

## Special interests have written dozens of South Dakota bills and laws in the last decade

Lisa Kaczke

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More than two dozen laws passed in South Dakota since 2010 were written outside the state by national special interest groups and think tanks.

South Dakota legislators often promote during debates that they implement laws specifically designed for the state rather than following national trends or the lead of other states.

But at least 60 bills introduced in the South Dakota Legislature between 2010 and 2018 mirror model bills introduced in state legislatures across the country that were written by sources outside of the state, according to an [investigation by USA Today, The Arizona Republic and the Center for Public Integrity](#).

The investigation found that at least 10,000 bills nearly entirely copied from model bills were introduced nationwide and more than 2,100 of those bills were signed into law.

Fifty-five percent of the 60 model bills introduced in South Dakota have become state laws, most passing in the House and Senate with little to no opposition in the votes, according to an Argus Leader analysis.

The bill topics range from an education tax credit for insurance companies, limiting asbestos liabilities for successor corporations and allowing the use of experimental medical treatment.

There may be some concern that model bills aren't specific to South Dakota, but "one of the biggest things we do as legislators is kill things that we don't think are good ideas," Sen. Jim Stalzer, R-Sioux Falls, said. "A lot of things die pretty quickly in committee hearings."

### S.D.'S Free Speech Bill Copies Model

This year, one previously failed model bill in South Dakota was signed into law on the second attempt.

The [campus intellectual diversity bill](#) introduced last year was nearly identical to a model bill written by conservative think tank American Legislative Exchange Council ([ALEC](#)). And South Dakota wasn't alone — ALEC's campus free speech model bill entitled "Forming Open and

Robust University Minds Act" was introduced in a total of nine state legislatures last year, according to the investigation.

South Dakota's bill was "pretty much almost the same" as ALEC's model bill on campus free speech, but a lot of free speech bills originate from the same national organizations even if they take different paths, said Michael Clark, the former Hartford legislator who sponsored the bill last year.

Legislators should not only consider where a bill originates, but also whether it makes sense for South Dakota, and the campus free speech bill made sense for the state, Clark said. He added that he's glad the free speech bill passed this year to benefit future higher education students.

"They're coming up behind us and they're going to be leading us," Clark said. "They need to have the opportunity to explore new ideas, and that's what this was all about: to present new ideas to them, for them to explore new ideas and new thoughts."

### Where Do Model Bills Come From?

Most of South Dakota's bills based on model legislation were written by ALEC, its progressive counterpart American Legislative and Issue Campaign Exchange (ALICE) or the National Council of Insurance Legislators. But other national think tank and industry groups have provided the language for unsuccessful legislation in South Dakota, according to the analysis, including:

- Americans United for Life
- The Goldwater Institute
- The Cato Institute
- American Public Policy Alliance
- Council of State Governments

It can be helpful for legislators to read model legislation as they work on bills, but in South Dakota, legislators typically have the Legislative Research Council staff assist in crafting bills to ensure that it meets the state's goals, said Stalzer, the state chair for ALEC. He added that it's rare for a model bill to be introduced verbatim into the South Dakota Legislature.

To become one of ALEC's model policies, which are posted on the organization's website, a proposal has to receive approval from ALEC's legislative members and private sector members and a final evaluation by ALEC's board of directors.

"For it to become recommended, it's got to be pretty well accepted across the board," said Stalzer, who has helped craft model bills.

### How A Model Bill Gets Passed

South Dakota became the first state in the United States to pass a law requiring university campuses to promote intellectual diversity this year.

The proposal began its path to become law in 2018 when twin bills protecting free speech on campuses were defeated in both the South Dakota House and Senate. The Board of Regents revised its policies in December to expand free speech on campuses after multiple back-and-forth letters between legislators and the regents, but legislators again introduced the bill this year to opposition from university leaders.

The bill was defeated again this year in committee, but was resurrected and passed after a student party at the University of South Dakota was renamed over concerns that it was culturally insensitive.

The addition of the phrase "intellectual diversity" is one of the few places where South Dakota's original bill differed in language from ALEC's campus free speech model bill. South Dakota's bill also included a definition of "counter demonstration" that ALEC did not and removed some of ALEC's definition of what could be considered disruptive behavior.

The South Dakota Legislature's intellectual diversity bill this year was a slimmed down version of last year's bill, and the final version that passed was an even more condensed version that represented a compromise between legislators and the Board of Regents, but it still contained four sections of text nearly identical to ALEC's model bill.

The bill originated when several legislators put their ideas together when it came to writing the bill with help from Foundation for Individual Rights in Education, Clark said. Sioux Falls Rep. Sue Peterson said she heard about the issue from constituents while she was a legislative candidate and then supported Clark's bill in the House.

Peterson, who sponsored the 2019 bill, said the issue was still on the minds of her constituents this year— despite the regents' rewritten policy — and the group worked with the state's Legislative Research Council to draft a bill to introduce in the House this year.

"We worked with our LRC staff to draft it," Peterson said. "I'm a member of a number of organizations, and I've looked at some things that other states have done as well. But it was really largely a product of what South Dakotans who talked to me wanted."

Lawmakers get outside opinions on bills and consider what's been done in other states, Peterson said, but she crafts bills based on South Dakota. She said there's likely legal language that's used regarding free speech and that language likely appears in other states' bills, but she finds the language that best fits what her constituents want.

"I don't really believe in taking something that is crafted somewhere else and dropping it in in South Dakota," she said.

But in general, assistance from national organizations can both help and hurt the process when it comes to crafting state legislation, Stalzer said.

"They've got the overall perspective, but not necessarily the issues that South Dakota was looking at," Stalzer said. "Sometimes their extra language got in the way because we were ultimately trying to get a South Dakota solution to it."

Clark noted that model bills can help legislators formulate state laws, but the mention that a bill originated with ALEC can leave some with a bad taste in their mouth.

"But it does give us an outline of what's been used in other states, then we can go to those other states and find out what worked there, what didn't — and then we also know that this is South Dakota," he said. "I like to say we're fiercely independent... this is South Dakota and we do things our own way."