

Meeting Agenda
SOUTH DAKOTA ATHLETIC COMMISSION

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Friday, April 30, 2021
12:15 pm. (CDT)

Proposed Agenda

- A. Call to Order
- B. Approval of the Agenda
- C. Open Forum: 5 minutes for the public to address the Commission
- D. Approval of Meeting Minutes of March 22, 2021
- E. Executive Session pursuant to SDCL 1-25-2(3) to consult with legal counsel regarding proposed or pending litigation
- F. COVID 19 Testing Policy
- G. Announcements
- H. Adjourn

Meeting Minutes
SOUTH DAKOTA ATHLETIC COMMISSION
Via Teleconference
March 22, 2021 12:00 p.m. CDT

Chairman Kilmer called the meeting to order at 12:03 p.m. Stalley called the roll. A quorum was present.

Members Present via Telephone: Mike Kilmer, Lee Lohff, Margaret Gillespie, and Richard Little

Members Absent: Verle Valentine

Others Present via Telephone: Jennifer Stalley, executive secretary; Amber Mulder, Department of Labor Legal Counsel; and Bob Mercer, KELOLand News

Little made a motion to approve the agenda. Lohff seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Kilmer asked for any public comments. There were no comments offered.

Lohff made a motion to approve the January 15, 2021 commission meeting minutes. Gillespie seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to accept the February 28, 2021 financial report. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Stalley updated the Commission on legislation regarding medical marijuana. Absent a special session, medical marijuana will become legal on July 1st. Commission rules regarding prohibited substances and therapeutic use exemptions are impacted by this change in law. The Commission instructed Stalley to draft changes to the necessary administrative rule changes for consideration at the next meeting.

Stalley updated the Commission on legislation regarding sports wagering. The Gaming Commission is in the process of promulgating rules to effectuate the legalization of sports wagering. The Gaming Commission will have draft rules in June. There is no anticipated impact on the Athletic Commission. The Commission instructed Stalley to draft any necessary administrative rule changes for consideration at the next meeting if the Gaming Commission rules impact the Athletic Commission.

Little made a motion to update the Commission's COVID-19 requirements to reflect that (1) all competitors, corners, and officials must have a negative COVID-19 test within 72 hours of the event unless the competitor, corner, or official has proof of full vaccination at least two weeks prior to the event; provide evidence of COVID-19 antibodies within three months of the event; or, if the competitor, corner or official had COVID-19 in the 90 days prior to the event has a physician's statement of recovery; (2) the perimeter between the cage/ring and spectators be expanded at the direction of the Commission, depending on the venue; (3) all competitors and corners remain in the venue locker room once at the event; and (4) the event venue is responsible to determining the number of spectators and conditions for attendance by spectators. Gillespie seconded the motion.

Lohff made a substitute motion to change the Commission's COVID-19 requirements to reflect that (1) all competitors, corners, and officials must have a negative COVID-19 test within 72 hours of the event unless the competitor, corner, or official has proof of full vaccination at least two weeks prior to the event; provide evidence of COVID-19 antibodies within three months of the event; or, if the competitor, corner or official had COVID-19 in the 90 days prior to the event has a physician's statement of recovery; (2) the perimeter between the cage/ring and spectators be expanded at the direction of the Commission, depending on the venue; (3) all competitors and corners remain in the venue locker room once at the event; (4) the event venue is responsible to determining the number of spectators and conditions for attendance by spectators; (5) events are encouraged to ask spectators to wear masks and maintain social distancing consistent with the Centers for Disease Control's recommendations; and (6) COVID-19 conditions for an approved event are subject to change without notice. Gillespie seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to approve mixed martial arts event for Legacy Fighting Alliance on May 14, 2021 and May 22, 2021, in Sioux Falls, subject to compliance with the Commission's rules, deadlines, regulations and COVID-19 requirements. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to approve a mixed martial arts event for Knockout Events on June 4, 2021, in Huron, subject to compliance with the Commission's rules, deadlines, regulations and COVID-19 requirements and registration as a licensed promoter. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to approve a mixed martial arts event for Ogitchidaa Promotions on June 5, 2021, at Dakota Sioux Casino, in Watertown, subject to compliance with the Commission's rules, deadlines, regulations and COVID-19 requirements, submission of proof of at least a \$20,000 line of irrevocable credit or surety bond, and registration as a licensed promoter. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to approve a mixed martial arts event for Fury Fights on a date to be agreed to between the promoter and Commission, in Watertown, subject to compliance with the Commission's rules, deadlines, regulations and COVID-19 requirements and submission of proof of at least a \$20,000 line of irrevocable credit or surety bond. Gillespie seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to approve boxing events for 15th Round Boxing on a date to be agreed to between the promoter and the Commission and on December 9, 2021, in Sioux Falls, subject to compliance with the Commission's rules, deadlines, regulations and COVID-19 requirements, submission of proof of at least a \$20,000 line of irrevocable credit or surety bond, and registration as a licensed promoter. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Lohff made a motion to renew the contract with Midwest Solutions for executive services of the Commission under the terms of the current contract plus a 2.4% increase in the monthly services fee. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Kilmer noted the executive session noticed on the agenda was not necessary.

Kilmer noted the next Commission meeting is scheduled for July 9, 2021 at 12:00 p.m. via teleconference.

Lohff made a motion to adjourn the meeting at 1:40 pm. Little seconded the motion. The Commission voted by roll call. Kilmer, Lohff, Gillespie and Little voted aye. **MOTION PASSED.**

Respectfully Submitted,

Richard Little, Secretary

DRAFT



STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR

KRISTI NOEM | GOVERNOR

April 21, 2021

Michael Kilmer
Chairman
South Dakota Athletic Commission
1351 N. Harrison Ave.
Pierre, SD 57501



Dear Chairman Kilmer,

On April 20, 2021, I signed a new Executive Order (E.O. 2021-08) that prohibits an agency, department board, commission, or other executive branch entity under the direct control of the Governor from mandating a COVID-19 vaccine passport or any similar proof-of-COVID-19 vaccination in order to enter government premises, receive a government benefit, license, or do business with the government. It has come to my attention that earlier this year the South Dakota Athletics Commission amended its COVID-19 requirements in part to require proof of a COVID-19 vaccination. After review of its language, I find the Commission's COVID-19 requirements conflict with E.O. 2021-08.

On March 22, 2021, the South Dakota Athletics Commission met to consider motions to amend its COVID-19 requirements. As part of that meeting, members passed the following requirement: "all competitors, corners, and officials must have a negative COVID-19 test within 72 hours of the event unless the competitor, corner, or official has proof of full vaccination at least two weeks prior to the event; provide evidence of COVID-19 antibodies within three months of the event; or, if the competitor, corner or official had COVID-19 in the 90 days prior to the event has a physician's statement of recovery."

While I understand the Commission's intent to protect participants at events under its purview, the Commission's decision to pass this motion does not reflect the State's relationship to the public regarding COVID-19. As I have made plain in E.O. 2021-08, "[g]overnment should recognize that its main goal in guiding individuals and businesses on public health restrictions is not complete elimination of risk, which is impossible to

Michael Kilmer
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achieve, but rather, is to guide the public by providing them the science, facts, and data to make their own educated decisions." Requiring proof of COVID-19 vaccination, such as the one found in the Commission's new requirements, eliminates the ability of our citizens to make reasonable decisions about their own health while they participate in activities in our communities.

I respectfully ask that the Commission immediately rescind, alter, or suspend its new COVID-19 requirements that require proof of a COVID-19 vaccination, and to further amend its requirements to better reflect the policy assertions found in E.O. 2021-08.

Sincerely,



Kristi Noem
Governor

**STATE OF SOUTH DAKOTA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER 2021-08**

Whereas, An outbreak of the severe respiratory disease, COVID-19, which is caused and transmitted by the person-to-person spread of the novel coronavirus, started in late 2019 in China and has currently been detected throughout the world, including South Dakota and the United States; and,

Whereas, The World Health Organization has designated COVID-19 a pandemic, and the U.S. Centers for Disease Control and Prevention has declared a public health emergency; and,

Whereas, Executive Order 2020-04 declared South Dakota to be in a state of emergency due to the COVID-19 pandemic and that state of emergency continues to currently exist within the State of South Dakota pursuant to Executive Order 2020-34; and,

Whereas, The vaccines that guard against the disease are now widely available throughout the country, and in South Dakota, the vaccines are available to all people over the age of 16 if they so choose; and,

Whereas, The vaccines have led to discussions of “vaccine passports” — certifications of COVID-19 vaccination used to “allow” certain exercises of freedom that Americans already possess as a matter of right and used to justify discriminatory treatment against those who have not received the vaccination; and,

Whereas, The State of South Dakota has led the nation in its approach to handling the pandemic by refusing to define what is an essential business, refusing to issue mask mandates, and refusing to shut down the free market; and,

Whereas, Any rationale for imposing public health restrictions that limit freedoms should be tailored to mitigate a verifiable, scientific risk; and,

Whereas, Implementing a vaccine passport program could lead to unjustified, non-science-based restrictions on travel, speech, association, and other civil rights; and,

Whereas, Vaccine passports could lead to the improper disclosure of private health information and the unjustified use of that private health information to restrict South Dakotans’ access to workplaces, schools, businesses, gatherings, hotels, gyms, restaurants, theaters, music venues, or even weddings; and,

Whereas, The New England Journal of Medicine¹ reports that rates of vaccination among racial minorities and low-income populations are likely to remain disproportionately low; and,

Whereas, Programs like a vaccine passport program that confer social privilege on the basis of “fitness” can lead to illegal and immoral discrimination; and,

¹Mark A. Hall, J.D., and David M. Studdert, Sc.D., L.L.B., M.P.H., “*Vaccine Passport*” *Certification — Policy and Ethical Considerations*, *New Eng. J. Med.* (Mar. 31, 2021), available at <https://www.nejm.org/doi/full/10.1056/NEJMp2104289>.

Whereas, The Constitution, the Tenth Amendment to the Constitution, and cases interpreting the Amendment since the beginning of the nation's history, properly recognize the police power to regulate health, safety, and welfare properly resides in the states, not in the federal government; and,

Whereas, It is improper to adopt an official government policy—a mandate—requiring widespread use of vaccine passports when such a mandate is overreaching, morally objectionable, and difficult to flexibly change as rapidly-changing conditions require; and,

Whereas, Any government action to condition participation in essential, or even non-essential, activities effectively amounts to an improper, unconstitutional, and mandatory vaccination program; and,

Whereas, Government should recognize that its main goal in guiding individuals and businesses on public health restrictions is not the complete elimination of risk, which is impossible to achieve, but rather, is to guide the public by providing them the science, facts, and data to make their own educated decisions:

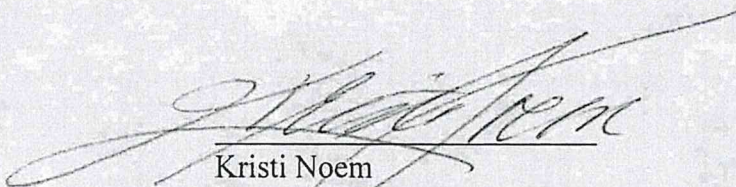
NOW, THEREFORE, I, KRISTI NOEM, Governor of the State of South Dakota, by the authority vested in me by the Constitution and the Laws of the State, including but not limited to SDCL 34-48A, do hereby Order and Direct the following:

1. No state agency, department, board, commission, or other executive branch entity or official under the direct control of the Governor shall require an individual to present a COVID-19 vaccine passport as described above, or any similar proof-of-COVID-19-vaccination, in order to enter government premises, receive a government benefit, license, or do business with the government.
2. No state agency, department, board, commission, or other executive branch entity or official under the direct control of the Governor shall require a private business to mandate a COVID-19 vaccine passport as described above, or any similar proof-of-COVID-19-vaccination, in order to receive a government benefit, license, or to do business with the government.
3. No local government or subdivision of local government should require an individual to present a COVID-19 vaccine passport as described above, or any similar proof-of-COVID-19-vaccination, in order to enter government premises, receive a local government benefit, license, or do business with that government.
4. No local government or subdivision of local government should require a private business to mandate a COVID-19 vaccine passport as described above, or any similar proof-of-COVID-19-vaccination, in order to receive a government benefit, license, or to do business with the government.
5. All state agencies, departments, boards, commissions, or other executive branch entities or officials under the direct control of the Governor are directed to immediately take steps to rescind, alter, or suspend any order, policy, administrative rule, or guidance that is in conflict with this Executive Order.


6. Nothing in this executive order shall be construed to: (a) limit the ability of a nursing home, assisted living facility, or long-term care facility to require documentation of a resident's vaccination status for any COVID-19 vaccine, or (b) apply to any documentation requirements necessary for the administration of a COVID-19 vaccine.

Dated in Pierre, South Dakota this 20th day of April, 2021.




Kristi Noem
Governor of South Dakota

ATTEST:


Steve Barnett
Secretary of State