

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0318

HOUSE ENGROSSED NO. **HB 1041** - 2/22/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on Appropriations at the request of the Department of Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning the application and
2 administration of the cigarette tax and to repeal certain requirements concerning cigarette
3 stamps.

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

5 Section 1. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 The tax imposed by §10-50-3 shall be paid at the time the distributor or wholesaler brings
8 or causes to be brought into this state cigarettes for sale; makes, manufactures, or fabricates
9 cigarettes in this state for sale in this state; or ships or transports cigarettes to any dealer in this
10 state to be sold by the dealer.

11 Section 2. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 A licensed distributor or licensed wholesaler may only sell cigarettes to a dealer. A dealer
14 may only purchase cigarettes from a wholesaler or distributor licensed pursuant to this chapter.



1 A violation of this section is a Class 2 misdemeanor.

2 Section 3. That chapter 10-50 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 On or before the fifteenth day of each calendar month, each person required to pay the tax
5 imposed by § 10-50-3 shall report, on forms prescribed by the secretary, the amount and type
6 of cigarettes manufactured or brought into this state during the month preceding the month in
7 which the report is made, and the source of the cigarettes. The person shall remit the tax due on
8 the cigarettes with the filing of the form. Any person who fails to timely file the form and pay
9 the tax in this section may be subject to penalty and interest as prescribed in § 10-59-6. Any
10 person seeking to recover overpayment of the tax imposed in § 10-50-3, may do so in the
11 manner prescribed in §§ 10-59-19, 10-59-20, 10-59-21, 10-59-22, 10-59-23, and 10-59-24. The
12 secretary may secure the payment of any unpaid tax in the same manner as prescribed in chapter
13 10-59. If any taxpayer destroys cigarettes upon which the tax imposed by § 10-50-3 has been
14 paid because of unfitness for sale, a credit or refund in the amount of the tax paid on those
15 products shall be granted as prescribed in this section for the overpayment of tax.

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

17 ~~—10-50-4. The payment of the tax imposed by § 10-50-3 shall be evidenced by the affixing~~
18 ~~of stamps to the packages containing the cigarettes as provided by this chapter. However, for~~
19 ~~cigarettes offered by manufacturers for gratis distribution as samples, the stamps are not~~
20 ~~required to be affixed to sample packages if the manufacturer of the cigarette reports and pays~~
21 ~~the tax directly to the state tax authority.~~

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

23 ~~—10-50-5. No stamps evidencing payment of the tax prescribed in § 10-50-3 shall be in a~~
24 ~~denomination of less than one cent and whenever the tax at the rate therein prescribed shall be~~

1 ~~a specified amount plus a fractional part of one cent, the package or carton shall be stamped for~~
2 ~~the next full cent, provided, that whenever the tax at the rate therein prescribed shall amount to~~
3 ~~twelve cents the package or carton shall be stamped for the exact amount of twelve cents.~~

4 Section 6. That § 10-50-6 be amended to read as follows:

5 10-50-6. Any cigarette on which a tax has been paid, ~~the payment being evidenced by the~~
6 ~~affixing of the stamp~~, is not subject to a further tax under this chapter. However, any person,
7 who possesses two thousand or more cigarettes ~~that do not bear a tax stamp indicating that the~~
8 South Dakota cigarette tax has not been paid, shall pay the tax imposed pursuant to § 10-50-3
9 plus a penalty equal to ten percent of the total tax due.

10 Section 7. That § 10-50-18 be repealed.

11 ~~10-50-18. The secretary of revenue and regulation shall secure stamps, of the design and~~
12 ~~denomination as the secretary prescribes, suitable to be affixed to packages of cigarettes as~~
13 ~~evidence of the payment of the tax imposed by this chapter. The secretary shall sell the stamps~~
14 ~~to licensed distributors at a discount of two percent of their face value and to no other person.~~

15 Section 8. That § 10-50-19 be repealed.

16 ~~10-50-19. The secretary of revenue and regulation may, in his discretion, permit a licensed~~
17 ~~distributor to pay for such stamps within thirty days after the date of purchase, provided a bond~~
18 ~~satisfactory to the secretary of revenue and regulation in an amount not less than the sale price~~
19 ~~of such stamps shall have been filed with the secretary conditioned upon payment for such~~
20 ~~stamps or upon a satisfactory depository agreement between the secretary of revenue and~~
21 ~~regulation and such licensed distributor, provided for a deposit of money or security in a~~
22 ~~depository to be named, such agreement conditioned upon payment for such stamps.~~

23 Section 9. That § 10-50-20 be repealed.

24 ~~10-50-20. No distributor shall sell or transfer any stamps issued under the provisions of this~~

1 ~~chapter. The secretary of revenue and regulation shall redeem any unused, uncanceled stamps~~
2 ~~presented by any licensed distributor at a price equal to ninety-five percent of their face value.~~

3 Section 10. That § 10-50-20.1 be amended to read as follows:

4 10-50-20.1. ~~Whenever~~ If a distributor destroys cigarettes accidentally or intentionally
5 because of staleness or other unfitness for sale which ~~have been stamped as provided in tax has~~
6 ~~been paid pursuant to this chapter~~, a credit or refund shall be given to the distributor ~~at a price~~
7 ~~equal to ninety-five percent of the face value of the stamps~~ upon proof of loss presented to the
8 department within one year after the destruction of the ~~stamped~~ cigarettes if loss is established
9 to the satisfaction of the Department of Revenue and Regulation.

10 Section 11. That § 10-50-21 be amended to read as follows:

11 10-50-21. Any person who ~~forges a counterfeit of any stamp prescribed by the secretary of~~
12 ~~revenue and regulation under the provisions of this chapter, or who uses a counterfeited stamp,~~
13 ~~or who knowingly possesses a counterfeited stamp, or who uses more than once any stamp~~
14 ~~required by this chapter, for the purpose of evading~~ evades the tax thereby imposed; by this
15 chapter is guilty of a Class 4 felony.

16 Section 12. That § 10-50-25 be repealed.

17 ~~—10-50-25. If the secretary of revenue and regulation finds that the collection of the tax~~
18 ~~imposed by this chapter would be facilitated thereby, the secretary may authorize any person,~~
19 ~~resident or located outside this state, engaged in the business of selling and shipping cigarettes~~
20 ~~into this state and purchasing at least seventy-five percent of the cigarettes from the~~
21 ~~manufacturers thereof, and who is a resident of any state authorizing by law the licensing of~~
22 ~~nonresidents, including residents of this state, to distribute cigarettes therein, upon complying~~
23 ~~with the requirements of the secretary of revenue and regulation, to affix or cause to be affixed~~
24 ~~the stamps required by this chapter on behalf of the purchasers of the cigarettes, who would~~

1 otherwise be taxable therefor. The secretary of revenue and regulation may sell the stamps to
2 such person as hereinbefore provided.

3 Section 13. That § 10-50-26 be repealed.

4 ~~10-50-26. The secretary of revenue and regulation shall require bond of such nonresident~~
5 ~~person, satisfactory to the secretary of revenue and regulation, in an amount not to exceed ten~~
6 ~~thousand dollars, which said bond shall be filed with the secretary of revenue and regulation~~
7 ~~conditioned upon the payment of the tax in compliance with such other requirements as the~~
8 ~~secretary of revenue and regulation may specify. Such bond shall be issued by a surety company~~
9 ~~licensed to do business in this state, and shall be in full force and effect for a period of one year~~
10 ~~and a day after the expiration of the bond, and until or unless a certificate be issued by the~~
11 ~~secretary of revenue and regulation to the effect that all taxes due to the state under this chapter~~
12 ~~have been paid. In the discretion of the secretary of revenue and regulation, a depository~~
13 ~~agreement may be accepted by the secretary of revenue and regulation in lieu of such surety~~
14 ~~bond, which said depository agreement shall be upon the same conditions as the bond above~~
15 ~~referred to, and shall be in full force and effect for one year and a day and until or unless a~~
16 ~~certificate be issued by the secretary of revenue and regulation to the effect that all taxes due to~~
17 ~~the state under this chapter have been paid.~~

18 Section 14. That § 10-50-27 be repealed.

19 ~~10-50-27. Such nonresident person shall agree to submit his books, accounts, and records~~
20 ~~to examination during reasonable business hours by the secretary of revenue and regulation or~~
21 ~~his duly authorized agent.~~

22 Section 15. That § 10-50-28 be repealed.

23 ~~10-50-28. Each such nonresident person, other than a foreign corporation which has~~
24 ~~complied with the provisions of the statutes of this state relative to foreign corporations, shall,~~

1 in writing, appoint the secretary of state and his successors in office to be his attorney, such
2 appointment to be made, acknowledged, and filed in the manner prescribed in the statutes
3 relative to foreign corporations. Service upon said attorney shall be sufficient service upon any
4 such nonresident person, whether a foreign corporation which has complied with the provisions
5 of the statutes relating to foreign corporations or not, and may be made by leaving a true copy
6 of the process with the secretary of state or at his office. When legal process against any such
7 nonresident person shall be served upon the secretary of state he shall notify such nonresident
8 person in the manner specified in the statutes relating to service of process upon foreign
9 corporations licensed to do business in this state, and shall collect the fee as therein specified.

10 Section 16. That § 10-50-29 be repealed.

11 ~~10-50-29. Any person complying with the provisions of §§ 10-50-25 to 10-50-28, inclusive,~~
12 ~~shall thereupon become a licensed distributor within the meaning of this chapter and shall be~~
13 ~~subject to all provisions of this chapter applicable to licensed distributors.~~

14 Section 17. That § 10-50-30 be repealed.

15 ~~10-50-30. Each distributor shall affix or cause to be affixed, in the manner as the secretary~~
16 ~~of revenue and regulation may specify in rules promulgated pursuant to chapter 1-26, to each~~
17 ~~individual package of cigarettes, to cartons containing more than one individual package of~~
18 ~~three, four, or five cigarettes sold or distributed by such distributor, stamps of the proper~~
19 ~~denomination, as required by this chapter. The stamps shall be affixed by a distributor before~~
20 ~~the cigarettes are transferred out of the distributor's premises, or in lieu thereof the amount of~~
21 ~~the tax due shall be entered on the invoice and stamps sufficient in denominations and amount~~
22 ~~shall accompany the invoice on every delivery of cigarettes.~~

23 Section 18. That § 10-50-31 be repealed.

24 ~~10-50-31. Each dealer upon opening any shipping package containing any unstamped~~

1 ~~taxable articles for purposes of sale or delivery to consumers, shall immediately affix the tax~~
2 ~~stamps required by this chapter.~~

3 Section 19. That § 10-50-32 be amended to read as follows:

4 10-50-32. No person, other than a licensed distributor, may sell, offer for sale, display for
5 sale, or possess with intent to sell, advertise for sale, ship or cause to be shipped, or possess with
6 intent to deliver to another person, any cigarettes which ~~do not bear stamps evidencing the~~
7 payment of the tax imposed by this chapter has not been paid.

8 A violation of this section is a Class 2 misdemeanor. Any subsequent violation is a Class
9 6 felony.

10 Section 20. That § 10-50-33 be repealed.

11 ~~10-50-33. The display or possession, except in original unopened shipping package,~~
12 ~~container, or case, of cigarettes by any dealers unless fully stamped as required by this chapter~~
13 ~~shall constitute prima facie evidence of possession with intent to sell the same.~~

14 Section 21. That § 10-50-34 be amended to read as follows:

15 10-50-34. The secretary of revenue and regulation and inspectors of the Department of
16 Revenue and Regulation ~~are charged with the duty of enforcing~~ shall enforce the provisions of
17 this chapter, ~~and are given~~ have the power of peace officers and ~~authorized and empowered to~~
18 may arrest any violator of the provisions of this chapter, ~~to enter complaint and may enter~~
19 complaints before any court of competent jurisdiction ~~and to seize without formal warrant and~~
20 ~~use as evidence any forged, counterfeited, spurious, or altered license or stamp found in~~
21 ~~possession of any person in violation of this chapter.~~

22 Section 22. That § 10-50-35 be amended to read as follows:

23 10-50-35. Any cigarettes found at any place in this state without ~~stamps affixed thereto~~ the
24 tax being paid as required by this chapter unless the cigarettes are in the possession of a licensed

1 distributor or wholesaler in the original unopened shipping package or unless ~~they~~ the cigarettes
2 are in a course of transit from without this state and consigned to a licensed distributor or a
3 licensed wholesaler, are declared to be contraband goods and may be seized by the secretary,
4 the secretary's agents, or employees, or by any law enforcement of this state if directed by the
5 secretary to do so, without a warrant.

6 Section 23. That § 10-50-36 be amended to read as follows:

7 10-50-36. Any cigarettes seized under the provisions of this chapter shall be confiscated and
8 forfeited to the state, ~~and the~~. The secretary shall sell ~~such~~ the confiscated ~~property~~ cigarettes
9 to a licensed dealer or distributor to the best advantage to the state. The proceeds from ~~such~~ the
10 sale shall be ~~forthwith~~ remitted to the secretary of revenue and regulation as part of the income
11 for the enforcement of this chapter. Such sale by the state ~~shall~~ does not relieve the purchaser
12 from paying the tax ~~and stamping the articles so sold to him~~, as provided in this chapter
13 ~~otherwise provided~~.

14 Section 24. That § 10-50-37 be repealed.

15 ~~10-50-37. Nothing in § 10-50-35 or 10-50-36 shall be construed to require the secretary of~~
16 ~~revenue and regulation to confiscate unstamped cigarettes when he shall have reason to believe~~
17 ~~that the owner thereof is not willfully or intentionally evading the tax imposed by this chapter.~~

18 Section 25. That § 10-50-39 be amended to read as follows:

19 10-50-39. On or before the fifteenth day of each month each distributor shall render to the
20 secretary of revenue and regulation a verified report of all sales and deliveries on forms
21 prescribed by the secretary, showing the quantity of cigarettes sold or delivered in this state
22 during the preceding calendar month, ~~the amount of stamps purchased and used during such~~
23 ~~period of time and the amount of stamps on hand at the end of the reporting period and such~~
24 other information as the secretary ~~shall require~~ requires.

1 Section 26. That § 10-50-58 be repealed.

2 ~~10-50-58. There is established in the state treasury a special revenue fund to be known as~~
3 ~~the cigarette stamp purchasing fund.~~

4 Section 27. That § 10-50-59 be repealed.

5 ~~10-50-59. In addition to the taxes and fees imposed by this chapter, the secretary of revenue~~
6 ~~and regulation may recover the cost of any stamps or other indicia that are required to be affixed~~
7 ~~to packages of cigarettes from those licensees affixing said stamps or indicia. The amount so~~
8 ~~recovered shall be deposited into the cigarette stamp purchasing fund and all money in the fund~~
9 ~~is continuously appropriated to the Department of Revenue and Regulation to be used to~~
10 ~~purchase stamps or other indicia.~~

11 Section 28. That § 10-50-60 be amended to read as follows:

12 10-50-60. The secretary of revenue and regulation may promulgate rules pursuant to chapter
13 1-26 concerning:

- 14 (1) Credit for damaged or unfit cigarette packages;
- 15 (2) ~~Refund for unused stamps and other indicia;~~
- 16 (3) The definition of cigarette wholesaler;
- 17 (4) Licensing, including bonding and filing license applications;
- 18 (5) The filing of returns and payment of tax;
- 19 (6) Determining the application of the tax and exemptions;
- 20 (7) Taxpayer record-keeping requirements; and
- 21 (8) Determining auditing methods.

22 Section 29. That § 10-50-80 be amended to read as follows:

23 10-50-80. No later than twenty days after the end of each calendar quarter, and more
24 frequently if so directed by the secretary, each distributor and wholesaler shall submit

1 information concerning each nonparticipating manufacturer as the secretary requires to facilitate
2 compliance with §§ 10-50-72 to 10-50-92, inclusive, including, a list by brand family of the
3 total number of cigarettes or, in the case of roll-your-own, the equivalent stick count, for which
4 the distributor or wholesaler ~~affixed cigarette tax stamps to a cigarette package, or otherwise~~
5 paid the cigarette tax due during the previous calendar quarter. The distributor or wholesaler
6 shall maintain and make available to the secretary all invoices and documentation of sales of
7 all nonparticipating manufacturer cigarettes and any other information relied upon in reporting
8 to the secretary for a period of six years. The secretary may, in addition to any other provision
9 of law, impose and collect a monetary penalty in an amount not to exceed five hundred dollars
10 per day, for the failure of a distributor or wholesaler to timely or accurately comply with this
11 section. Any monetary penalty collected pursuant to this section shall be deposited in the state
12 general fund.

13 Section 30. That § 10-50-82 be amended to read as follows:

14 10-50-82. No distributor or wholesaler or other person may:

15 ~~(1) Affix a South Dakota cigarette tax stamp to a package or other container of~~
16 ~~cigarettes, or pay South Dakota cigarette tax on cigarettes of a tobacco product~~
17 ~~manufacturer or brand family not included in the directory; or~~

18 ~~(2) Sell sell or distribute, or acquire, hold, own, possess, transport, import, or cause to~~
19 ~~be imported, cigarettes of a tobacco product manufacturer or brand family not~~
20 ~~included in the directory that the distributor, wholesaler, or other person knows or~~
21 ~~should know are intended for distribution or sale in this state.~~

22 The secretary may, in addition to any other provision of law, impose and collect a monetary
23 penalty in an amount not to exceed the greater of five hundred percent of the retail value of the
24 cigarettes or five thousand dollars for each violation of this section by a distributor or

1 wholesaler. Any monetary penalty collected pursuant to this section shall be deposited in the
2 state general fund.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0259

HOUSE AGRICULTURE AND NATURAL RESOURCES

ENGROSSED NO. **HB 1057** - 2/18/2010

Introduced by: The Committee on Agriculture and Natural Resources at the request of the
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to revise and update certain provisions relating to dairy
2 production and inspection.

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

4 Section 1. That § 39-6-3 be amended to read as follows:

5 39-6-3. ~~Section 39-6-2 shall~~ The provisions of § 39-6-2 do not apply to milk, cream, skim
6 milk, or goat milk occasionally secured or purchased for his personal use by any consumer at
7 the place or farm where the milk is produced, ~~and provided further, that § 39-6-2 shall not apply~~
8 ~~to~~ or to any active farm producer of milk, selling and delivering his the producer's own
9 production direct to consumers only, if the place or farm where the milk is produced has a
10 license or permit issued by the department pursuant to § 40-32-4 or 40-32-10.1. The containers
11 in which any unpasteurized milk is sold shall be clearly labeled by the producer as "raw milk."
12 ~~Failure to affix such label is a Class 2 misdemeanor.~~

13 Section 2. That § 39-6-7 be repealed.

14 ~~39-6-7. Any person desiring to use the Grade A label on milk or milk products shall make~~



1 application for a permit to the secretary of agriculture on a form furnished and prescribed by the
2 secretary. The permit shall be issued by the secretary when he has determined that the applicant
3 has complied with the requirements of state law and regulation.

4 Section 3. That § 39-6-8 be repealed.

5 ~~— 39-6-8. Permits to use the Grade A label on milk or milk products shall not be transferable~~
6 ~~with respect to person or location and may be suspended or revoked as provided in §§ 39-6-15~~
7 ~~and 39-6-16.~~

8 Section 4. That § 39-6-10.1 be repealed.

9 ~~— 39-6-10.1. No person importing milk or milk products into this state under a permit granted~~
10 ~~pursuant to § 39-6-10 may sell or offer for sale any milk or milk product in this state at a price~~
11 ~~less than he charges or is allowed to charge in his state of origin.~~

12 Section 5. That § 39-6-12 be amended to read as follows:

13 39-6-12. ~~All processors, except those under the supervision of recognized municipal~~
14 ~~inspections; Each processor shall provide adequate and continuous field service to assist the~~
15 ~~producers who sell their milk to their plants the processor's plant and to supervise the operations~~
16 ~~within the processing plants plant to attain and maintain compliance with Grade A requirements.~~

17 Section 6. That § 39-6-17 be repealed.

18 ~~— 39-6-17. Nothing in this chapter shall be construed as prohibiting any first or second class~~
19 ~~municipality from enacting and enforcing ordinances establishing a system of continuous~~
20 ~~inspection of dairy products and dairy products plants or from grading or degrading any dairy~~
21 ~~or dairy products or barring the same from sale within the municipality, provided that any such~~
22 ~~ordinance shall provide a system of inspection equal at least to the system of inspection of dairy~~
23 ~~products or dairy products plants established by the secretary of agriculture and the regulations~~
24 ~~promulgated under his authority, and that the grading of any dairy products or dairy products~~

1 plants as provided by ordinance shall be at least equal to that employed by the Department of
2 Agriculture.

3 Section 7. That § 39-6-18 be repealed.

4 ~~39-6-18. The Department of Agriculture shall survey not less than every two years nor~~
5 ~~oftener than every six months, the milk supply and the enforcement by a first or second class~~
6 ~~municipality having a system of inspection and grading to determine whether or not such system~~
7 ~~of inspection and grading is being enforced. In the case of interstate and intrastate shipments of~~
8 ~~Grade A milk and milk products, a survey rating of compliance shall be furnished by the~~
9 ~~department upon request.~~

10 Section 8. That § 39-6-19 be repealed.

11 ~~39-6-19. Whenever the Department of Agriculture shall find that a city system of inspection~~
12 ~~and grading is not being enforced or that the standards are not at least equal to those of the~~
13 ~~department, a written notice of such findings shall be given to the chief administrative officer~~
14 ~~of the first or second class municipality and a copy of such written notice shall be filed with the~~
15 ~~city auditor, clerk, or recorder as the case may be. If the department thereafter shall find, not less~~
16 ~~than thirty days after the date of such notice, that the system of inspection and grading is not~~
17 ~~being enforced or is not at least equal to that of the department, then the inspection and grading~~
18 ~~by the department shall become applicable to all persons and establishments theretofore~~
19 ~~operating under the municipal system until the deficiencies are corrected.~~

20 Section 9. That § 39-6-20 be amended to read as follows:

21 39-6-20. Any person who sells, offers, or exposes It is a violation for any person to sell,
22 offer, or expose for sale, any milk or milk products labeled Grade A, unless the milk or milk
23 products have been produced and processed in accordance with the requirements of §§ 39-6-7
24 to 39-6-19, inclusive, and the rules promulgated by the secretary of agriculture in respect

1 thereto, is guilty of a ~~Class 2 misdemeanor~~.

2 Section 10. That § 39-6-21 be repealed.

3 ~~39-6-21. Any person owning milk or dairy cases may adopt and use a name or mark on the~~
4 ~~cases and register the name or mark with the Department of Agriculture. Unless authorized by~~
5 ~~the owner, no person may:~~

6 ~~(1) Use any milk case or dairy case for any purpose;~~

7 ~~(2) Sell or offer for sale any milk case or dairy case;~~

8 ~~(3) Deface, obliterate, destroy, cover up, or otherwise remove the name or mark on any~~
9 ~~milk case or dairy case.~~

10 Section 11. That § 39-6-22 be repealed.

11 ~~39-6-22. It is a violation of this section for any person to remove any milk case or dairy case~~
12 ~~from the premises or parking area of any processor, distributor, or retail establishment, unless~~
13 ~~legally authorized to do so. A violation of this section is a Class 2 misdemeanor.~~

14 Section 12. That § 40-32-2 be amended to read as follows:

15 40-32-2. Terms as used in this chapter, mean:

16 (1) "Bulk milk pick-up tanker," any vehicle, including the truck, tank, and those
17 appurtenances necessary for the tank's use, used by a bulk milk hauler or sampler to
18 transport bulk raw milk for pasteurization from a dairy farm to a milk plant, receiving
19 station, or transfer station;

20 (2) "Dairy farm," any place or premise where one or more cows, sheep, or goats are kept
21 and from which a part or all of the milk or milk products are produced and sold, or
22 offered for sale to a milk plant;

23 (3) "Dairy fieldman," a person employed by the milk plant to determine if a producer is
24 maintaining satisfactory production requirements in accordance with this chapter and

- 1 the rules adopted thereunder;
- 2 (4) "Department," the Department of Agriculture;
- 3 (5) "Grade A," any milk or milk product that complies with the standards set forth in any
4 rules promulgated pursuant to § 39-6-9;
- 5 (6) "Manufacturing grade," any milk or milk product subject to the requirements of
6 chapter 40-32 that is produced for processing and manufacturing into products for
7 human consumption not subject to Grade A requirements stated in chapter 39-6;
- 8 (7) "Marketing organization," an entity established for the purpose of procuring farm
9 produced milk and offering for sale that milk to a milk plant, receiving station, or
10 transfer station;
- 11 (8) "Milk distributor," any person who purchases milk or milk products and transports
12 them to a retail dealer or a consumer;
- 13 (9) "Milk plant," any place where milk or milk products are delivered or processed for
14 commercial purposes;
- 15 (10) "Milk product," any product formulated by the addition of milk or a product derived
16 from more than fifty percent milk if the milk or the product derived from more than
17 fifty percent milk is greater than fifty percent of the product by weight or volume;
- 18 (11) "Milk transport tank," any vehicle, including the truck and tank, used by a bulk milk
19 hauler or sampler to transport bulk shipments of milk and milk products, from a milk
20 plant, receiving station, or transfer station to another milk plant, receiving station, or
21 transfer station;
- 22 ~~(11)~~(12) "Pasteurization," the process of heating every particle of milk or milk product
23 in properly designed and operated equipment, to one of the temperatures given
24 in the following table and held continuously at or above that temperature for

1 at least the corresponding specified time:

| 2 | Temperature | Time |
|---|---------------|-------------|
| 3 | *145°F (63°C) | 30 minutes |
| 4 | *161°F (72°C) | 15 seconds |
| 5 | 191°F (89°C) | 1 second |
| 6 | 194°F (90°C) | 0.5 second |
| 7 | 201°F (94°C) | 0.1 second |
| 8 | 204°F (96°C) | 0.05 second |
| 9 | 212°F (100°C) | 0.01 second |

10 * If the fat content of the milk product is ten percent or more, or if it contains added
 11 sweeteners, the specified temperature shall be increased by 5°F (3°C). However,
 12 eggnog shall be heated to at least the following temperature and time specifications:

| 13 | Temperature | Time |
|----|--------------|------------|
| 14 | 155°F (69°C) | 30 minutes |
| 15 | 175°F (80°C) | 25 seconds |
| 16 | 180°F (83°C) | 15 seconds |

17 Nothing in this definition bars any other pasteurization process which has been
 18 recognized by the Food and Drug Administration to be equally efficient and which
 19 is approved by the regulatory agency;

20 ~~(12)~~(13) "Pasteurization unit," a unit of equipment that pasteurizes milk and milk
 21 products that meets the 3-A accepted practices for the sanitary construction,
 22 installation, testing, and operation of a pasteurizer;

23 ~~(13)~~(14) "Producer," any person who operates a dairy farm and provides, sells, or offers
 24 milk for sale;

25 ~~(14)~~(15) "Receiving station," any place, premise, or establishment where raw milk is

1 received, collected, handled, stored, or cooled and prepared for further
2 transporting;

3 ~~(15)~~(16) "Secretary," the secretary of agriculture;

4 ~~(16)~~(17) "Single-service article fabricating plant," any plant manufacturing single-
5 service articles expected to be in contact with Grade A milk and milk
6 products;

7 ~~(17)~~(18) "Transfer station," any place, premise, or establishment where milk or milk
8 products are transferred directly from one milk tank truck to another.

9 Section 13. That § 40-32-10 be amended to read as follows:

10 40-32-10. ~~It shall be the duty of the secretary of agriculture~~ The secretary shall, upon
11 evidence of ~~repeated~~ violations of the ~~dairy statutes and regulations, to~~ provisions of this chapter
12 and chapters 39-6, 39-7, and 39-8, and any rules promulgated pursuant to those chapters, revoke
13 or suspend any dairy products plant license; ~~provided, however, that~~ However, no license shall
14 may be revoked except on twenty days' notice to the licensee, ~~his or its~~ or the licensee's agent
15 or manager, ~~to~~ Any notice shall be served as summons is served in civil actions, ~~specifying~~
16 specify the substance of the complaint and the time and place at which evidence will be heard
17 in support of the complaint, and that an opportunity will be offered to ~~such~~ the licensee
18 complained about to submit evidence and proof in defense of ~~such charges~~ any charge.

19 Section 14. That § 40-32-10.1 be amended to read as follows:

20 40-32-10.1. A producer engaged in the business of producing milk and offering for sale such
21 ~~milk to a milk plant~~ for purposes other than Grade A milk as set forth in chapter 39-6 and before
22 the milk is to be transported from the premises of the producer, shall obtain a permit from the
23 secretary.

24 Section 15. That § 40-32-10.4 be amended to read as follows:

1 40-32-10.4. The ~~secretary of agriculture or his duly qualified representative~~ department may
2 suspend a producer's license or permit upon failure by the holder of the permit to comply with
3 any of the terms of state ~~law and regulation~~ statute or promulgated rule or for interference with
4 inspection. In addition to the administrative sanctions available to the department pursuant to
5 this chapter and chapters 39-6, 39-7, and 39-8, any licensed or nonlicensed producer who
6 commits any violation of this chapter or chapters 39-6, 39-7, or 39-8, may be assessed a civil
7 penalty not to exceed five thousand dollars per violation or may be subject to injunctive and
8 declaratory relief by the circuit court. The department is not required to seek the administrative
9 sanctions available under this section prior to commencing an action in circuit court against an
10 alleged violator of this chapter or chapters 39-6, 39-7, or 39-8.

11 Section 16. That § 40-32-23 be amended to read as follows:

12 40-32-23. The ~~secretary of agriculture or his duly authorized representatives~~ department
13 shall have access, ingress, and egress to all places of business, factories, buildings, or related
14 areas where any milk or milk products are produced, bought, manufactured, held, or stored,
15 including any vehicles used for the transportation of milk or milk products, ~~and~~. The department
16 shall have access to all of the books and records of such places of business for the purpose of
17 enforcing the provisions of this chapter. The ~~secretary or his duly authorized representative~~ shall
18 ~~have the authority to~~ department may take any samples deemed necessary for the proper
19 enforcement of this chapter.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

336R0111

HOUSE LOCAL GOVERNMENT

ENGROSSED NO. **HB 1107** - 2/16/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Van Gerpen, Fargen, Frerichs, Hoffman, Juhnke, Lucas, Steele, Street, and Wismer and Senators Hanson (Gary) and Fryslie

1 FOR AN ACT ENTITLED, An Act to permit certain persons to renew an operator's license,
2 motorcycle operator's license, or nondriver identification card without appearing in person
3 at a driver license exam site.

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

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

6 32-12-1. For purposes of this chapter, terms are defined in § 32-14-1. Terms used in this
7 chapter mean:

8 (1) "Driver license," a document issued by a state or jurisdiction to an individual that
9 authorizes the individual to drive a motor vehicle, including an operator's license,
10 motorcycle operator's license, restricted minor's permit, motorcycle restricted minor's
11 permit, instruction permit, motorcycle instruction permit, and temporary permit;

12 (2) "Operator's license," any document issued by a state or jurisdiction to an individual
13 that bestows full driving privileges upon the individual; ~~and~~

14 (3) "Personally identifiable information," any information that can be used to distinguish



1 or trace an individual's identity, such as name, social security number, or driver
2 license or nondriver identification card number; and

3 (4) "Principal residence," the location where a person currently resides even if at a
4 temporary address.

5 Section 2. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
6 follows:

7 Any person who holds a valid South Dakota operator's license, motorcycle operator's
8 license, or nondriver identification card that meets the requirements of this chapter and 6 C.F.R.
9 Part 37, as amended to January 1, 2010, may apply for renewal by mail once in any ten year
10 period if:

11 (1) The applicant is a citizen or national of the United States or is an alien who has
12 permanent resident status;

13 (2) The applicant has not had a material change in any personally identifiable
14 information as defined in § 32-12-1. A change of address of principal residence does
15 not constitute a material change;

16 (3) The applicant is not applying for reinstatement after a suspension, revocation,
17 disqualification, or cancellation; and

18 (4) The applicant has complied with all other provisions of this chapter and is eligible
19 for renewal by mail as determined by the Department of Public Safety.

20 Section 3. That chapter 32-12 be amended by adding thereto a NEW SECTION to read as
21 follows:

22 The secretary of the Department of Public Safety shall promulgate rules, pursuant to chapter
23 1-26, on medical and vision standards, presentment of documents, application deadlines, and
24 fees relating to the renewal by mail of an operator's license, motorcycle operator's license, or

1 nondriver identification card under the provisions of this chapter.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

637R0470

HOUSE ENGROSSED NO. **HB 1136** - 2/22/2010

Introduced by: Representatives Hunt, Bolin, Brunner, Greenfield, Jensen, Juhnke, Novstrup (David), Olson (Betty), Peters, and Steele and Senators Rhoden, Abdallah, Fryslie, Gant, Hansen (Tom), and Novstrup (Al)

1 FOR AN ACT ENTITLED, An Act to limit asbestos-related liabilities for certain successor
2 corporations.

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

4 Section 1. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Terms used in this Act mean:

- 7 (1) "Corporation," any corporation for profit, including a domestic corporation organized
8 under the laws of this state or a foreign corporation organized under laws other than
9 the laws of this state;
- 10 (2) "Successor," any corporation that assumes or incurs or has assumed or incurred
11 successor asbestos-related liabilities and that became a successor before January 1,
12 1972, or any successors of that corporation;
- 13 (3) "Transferor," any corporation from which successor asbestos-related liabilities are
14 or were assumed or incurred.



1 Section 2. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
2 follows:

3 For the purposes of this Act, an asbestos claim is any claim, wherever or whenever made,
4 for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in
5 any way related to asbestos, including:

- 6 (1) The health effects of exposure to asbestos, including a claim for personal injury or
7 death, mental or emotional injury, risk of disease or other injury, or the costs of
8 medical monitoring or surveillance;
- 9 (2) Any claim made by or on behalf of any person exposed to asbestos, or a
10 representative, spouse, parent, child, or other relative of the person; and
- 11 (3) Any claim for damage or loss caused by the installation, presence, or removal of
12 asbestos.

13 Section 3. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
14 follows:

15 For the purposes of this Act, successor asbestos-related liabilities are any liabilities, whether
16 known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued,
17 liquidated or unliquidated, or due to become due, which are related to asbestos claims and were
18 assumed or incurred by a corporation as a result of, or in connection with, a merger or
19 consolidation, or the plan of merger or consolidation related to the merger or consolidation with
20 or into another corporation, or that are related in any way to asbestos claims based on the
21 exercise of control or the ownership of stock of the corporation before the merger or
22 consolidation. The term includes liabilities that, after the time of the merger or consolidation
23 for which the fair market value of total gross assets is determined, pursuant to section 6 of this
24 Act, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged,

1 by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a
2 transferor, in connection with settlements, judgments, or other discharges in this state or another
3 jurisdiction.

4 Section 4. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 The cumulative successor asbestos-related liabilities of any successor corporation are limited
7 to the fair market value of the total gross assets of the transferor determined as of the time of
8 the merger or consolidation. The successor corporation does not have responsibility for
9 successor asbestos-related liabilities in excess of this limitation.

10 Section 5. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 If the transferor had assumed or incurred successor asbestos-related liabilities or liabilities
13 in connection with a prior merger or consolidation with a prior transferor, then the fair market
14 value of the total assets of the prior transferor determined as of the time of the earlier merger
15 or consolidation shall be substituted for the limitation set forth in section 4 of this Act for
16 purposes of determining the limitation of liability of a successor corporation.

17 Section 6. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
18 follows:

19 Any successor corporation may establish the fair market value of total gross assets for the
20 purpose of the limitations under sections 4 and 5 of this Act through any method reasonable
21 under the circumstances, including:

- 22 (1) By reference to the going concern value of the assets or to the purchase price
23 attributable to, or paid for, the assets in arms-length transactions; or
- 24 (2) In the absence of other readily available information from which the fair market value

1 can be determined, by reference to the value of the assets recorded on a balance sheet.

2 Total gross assets include intangible assets. To the extent total gross assets include any
3 liability insurance that was issued to the transferor whose assets are being valued for purposes
4 of this section, the applicability, terms, conditions, and limits of such insurance are not affected
5 by this section, nor does this section otherwise affect the rights and obligations of an insurer,
6 transferor, or successor under any insurance contract or any related agreements, including pre-
7 enactment settlements resolving coverage-related disputes, and the rights of an insurer to seek
8 payment for applicable deductibles, retrospective premiums, or self-insured retentions or to seek
9 contribution from a successor for uninsured or self-insured periods or periods where insurance
10 is uncollectible or otherwise unavailable. Without limiting the foregoing, to the extent total
11 gross assets include any such liability insurance, a settlement of a dispute concerning any such
12 liability insurance coverage entered into by a transferor successor with the insurers of the
13 transferor before the date of enactment of this Act shall be determinative of the total coverage
14 of such liability insurance to be included in the calculation of the transferor's total gross assets.

15 Section 7. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 The fair market value of total gross assets at the time of the merger or consolidation shall
18 increase annually at a rate equal to the sum of the prime rate as listed in the first edition of the
19 *Wall Street Journal* published for each calendar year since the merger or consolidation, unless
20 the prime rate is not published in that edition of the *Wall Street Journal*, in which case any
21 reasonable determination of the prime rate on the first day of the year may be used, plus one
22 percent. This rate may not be compounded. The adjustment of the fair market value of total
23 gross assets shall continue as provided in this section until the date the adjusted value is first
24 exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed

1 to be paid by or on behalf of the successor corporation or a predecessor or by or on behalf of a
2 transferor after the time of the merger or consolidation for which the fair market value of total
3 gross assets is determined.

4 No adjustment of the fair market value of total gross assets may be applied to any liability
5 insurance that may be included in the definition of total gross assets by section 6 of this Act.

6 Section 8. That chapter 20-9 be amended by adding thereto a NEW SECTION to read as
7 follows:

8 The provisions of sections 4 and 5 of this Act do not apply to any of the following:

- 9 (1) Workers' compensation benefits paid by or on behalf of an employer to an employee
10 under the provisions of Title 62, or a comparable workers' compensation law of
11 another jurisdiction;
- 12 (2) Any claim against a corporation that does not constitute a successor asbestos-related
13 liability;
- 14 (3) Any obligation under the National Labor Relations Act, 29 U.S.C. section 151, et
15 seq., or under any collective bargaining agreement; or
- 16 (4) A successor that, after a merger or consolidation, continued in the business of mining
17 asbestos or in the business of selling or distributing asbestos fibers or in the business
18 of manufacturing, distributing, removing, or installing asbestos-containing products
19 which were the same or substantially the same as those products previously
20 manufactured, distributed, removed, or installed by the transferor.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

956R0362

HOUSE EDUCATION ENGROSSED NO. **HB 1150** - 2/17/2010

Introduced by: Representatives Peters, Blake, Bolin, Brunner, Curd, Cutler, Engels, Faehn, Gibson, Gosch, Hunt, Jensen, Kirkeby, Krebs, Lange, Lederman, Lust, McLaughlin, Moser, Noem, Novstrup (David), Olson (Ryan), Rounds, Sly, Solberg, Solum, Sorenson, Steele, Thompson, Tidemann, and Turbiville and Senators Gray, Abdallah, Dempster, Gant, Hansen (Tom), Haverly, Jerstad, Merchant, Miles, Novstrup (Al), Schmidt, Tieszen, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise the calculation of the small school adjustment in
2 the state aid to education formula for certain students who participate in open enrollment.

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

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the average number of resident and nonresident
7 kindergarten through twelfth grade pupils enrolled in all schools operated by the
8 school district during the previous regular school year, minus average number of
9 pupils for whom the district receives tuition, except pupils described in subdivision
10 (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42.1 and plus the
11 average number of pupils for whom the district pays tuition;

12 (1A) Nonresident students who are in the care and custody of the Department of Social



1 Services, the Unified Judicial System, the Department of Corrections, or other state
2 agencies and are attending a public school may be included in the average daily
3 membership of the receiving district when enrolled in the receiving district. When
4 counting a student who meets these criteria in its general enrollment average daily
5 membership, the receiving district may begin the enrollment on the first day of
6 attendance. The district of residence prior to the custodial transfer may not include
7 students who meet these criteria in its general enrollment average daily membership
8 after the student ceases to attend school in the resident district;

9 (2) "Adjusted average daily membership," calculated as follows:

10 (a) For districts with an average daily membership of two hundred or less,
11 multiply 1.2 times the average daily membership;

12 (b) For districts with an average daily membership of less than six hundred, but
13 greater than two hundred, raise the average daily membership to the 0.8293
14 power and multiply the result times 2.98;

15 (c) For districts with an average daily membership of six hundred or more,
16 multiply 1.0 times their average daily membership;

17 (2A) "Fall enrollment," the number of kindergarten through twelfth grade students enrolled
18 in all schools operated by the school district on the last Friday of September of the
19 previous school year minus the number of students for whom the district receives
20 tuition, except nonresident students who are in the care and custody of a state agency
21 and are attending a public school and students for whom tuition is being paid
22 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
23 tuition. When computing state aid to education for a school district under the
24 foundation program pursuant to § 13-13-73, the secretary of the Department of

1 Education shall use either the school district's fall enrollment or the average of the
2 school district's fall enrollment and the school district's fall enrollment from the prior
3 year, whichever is higher. However, if a school district qualifies to benefit from both
4 the averaging permitted in this subdivision and the one-time payment provided in
5 § 13-13-80 in the same fiscal year, the school district may not benefit from both, but
6 only from the one that provides the most additional funding to the district;

7 (2B) "Current fall enrollment," the number of kindergarten through twelfth grade students
8 enrolled in all schools operated by the school district on the last Friday of September
9 of the current school year minus the number of students for whom the district
10 receives tuition except nonresident students who are in the care and custody of a state
11 agency and are attending a public school and students for whom tuition is being paid
12 pursuant to § 13-28-42.1, plus the number of students for whom the district pays
13 tuition;

14 (2C) "Small school adjustment," calculated as follows:

15 (a) For districts with a fall enrollment of two hundred or less, multiply 0.2 times
16 \$4,237.72;

17 (b) For districts with a fall enrollment of greater than two hundred, but less than
18 six hundred, multiply the fall enrollment times negative 0.0005; add 0.3 to that
19 result; and multiply the sum obtained times \$4,237.72;

20 The total fall enrollment of a school district determines if a school district falls into
21 either category (a) or category (b) above or is not eligible to receive the small school
22 adjustment. However, if the fall enrollment of a school district includes any student
23 who is participating in the enrollment options program pursuant to § 13-28-40, the
24 small school adjustment calculated for that student shall be based upon either the fall

1 enrollment of that student's resident school district or the fall enrollment of the school
2 district in which the student is enrolled, whichever is greater. If either the student's
3 resident school district or the receiving school district is not eligible to receive the
4 small school adjustment based upon the size of its fall enrollment, no small school
5 adjustment may be calculated for that student in the receiving school district even if
6 the receiving school district is otherwise eligible for the small school adjustment
7 based upon the size of its fall enrollment. If both the student's resident school district
8 and the school district in which the student is enrolled are eligible to receive the
9 small school adjustment, the amount calculated for that student in the receiving
10 school district shall be based upon the fall enrollment of either the resident school
11 district or the receiving school district, whichever is greater. However, the provisions
12 in this subdivision relative to students participating in the enrollment options
13 program do not apply to any student in the enrollment options program who enrolls
14 in a school district defined as sparse pursuant to § 13-13-78, and the small school
15 adjustment calculated for that student is based on the fall enrollment of the sparse
16 school district;

17 (3) "Index factor," is the annual percentage change in the consumer price index for urban
18 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
19 the United States Department of Labor for the year before the year immediately
20 preceding the year of adjustment or three percent, whichever is less;

21 (4) "Per student allocation," for school fiscal year 2009 is \$4,664.66. Each school fiscal
22 year thereafter, the per student allocation is the previous fiscal year's per student
23 allocation increased by the index factor;

24 (5) "Local need," is the sum of:

- 1 (a) The per student allocation multiplied by the fall enrollment; and
- 2 (b) The small school adjustment, if applicable, multiplied by the fall enrollment;
- 3 and
- 4 (c) The payment distributed pursuant to § 13-13-80, if applicable;
- 5 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
- 6 applying the levies established pursuant to § 10-12-42;
- 7 (7) "General fund balance," the unreserved fund balance of the general fund, less general
- 8 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
- 9 out of the general fund for the previous school fiscal year;
- 10 (8) "General fund balance percentage," is a school district's general fund balance divided
- 11 by the school district's total general fund expenditures for the previous school fiscal
- 12 year, the quotient expressed as a percent;
- 13 (9) "General fund base percentage," is the lesser of:
- 14 (a) The general fund balance percentage as of June 30, 2000; or
- 15 (b) The maximum allowable percentage for that particular fiscal year as stated in
- 16 this subsection.
- 17 For fiscal year 2008, the maximum allowable percentage is one hundred percent; for
- 18 fiscal year 2009, eighty percent; for fiscal year 2010, sixty percent; for fiscal year
- 19 2011, forty percent; for fiscal year 2012 and subsequent fiscal years, twenty-five
- 20 percent. However, the general fund base percentage can never be less than twenty-
- 21 five percent;
- 22 (10) "Allowable general fund balance," the general fund base percentage multiplied by the
- 23 district's general fund expenditures in the previous school fiscal year;
- 24 (11) "General fund exclusions," revenue a school district has received from the imposition

1 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
 2 from gifts, contributions, grants, or donations; revenue a school district has received
 3 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; revenue a school district
 4 has received as compensation for being a sparse school district under the terms of
 5 §§ 13-13-78 and 13-13-79; any revenue a school district has received under the
 6 provisions of the American Recovery and Reinvestment Act of 2009 (P.L. 111-5);
 7 and any revenue in the general fund set aside for a noninsurable judgment.

8 Section 2. That § 13-13-73 be amended to read as follows:

9 13-13-73. The secretary of the Department of Education shall compute state aid to education
 10 for each school district under the foundation program according to the following calculations:

- 11 (1) Determine each school district's fall enrollment;
- 12 (2) To arrive at the local need per district:
 - 13 (a) Multiply the per student allocation by the total fall enrollment;
 - 14 (b) ~~Multiply the small school adjustment , if applicable, by the fall enrollment~~
 15 Divide the total fall enrollment into subgroups based upon the small school
 16 adjustment applicable to each subgroup as calculated pursuant to subdivision
 17 13-13-10.1(2C), and multiply the fall enrollment within each subgroup by the
 18 small school factor appropriate for that subgroup; and
 - 19 (c) Add the product of subsection (a) to the product or products of subsection (b)
 20 plus the amount of any payments received pursuant to § 13-13-80;
- 21 (3) State aid is (a) local need minus local effort, or (b) zero if the calculation in (a) is a
 22 negative number;
- 23 (4) If the state aid appropriation for the general support of education is in excess of the
 24 entitlement provided for in this section, the excess shall be used to fund any shortfall

1 of the appropriation as provided for in § 13-37-36.3. The secretary shall report to the
2 Governor by January seventh of each year, the amount of state aid necessary to fully
3 fund the general aid formula in the current year. If a shortfall in the state aid
4 appropriation for general education exists that cannot be covered by § 13-37-45, the
5 Governor shall inform the Legislature and provide a proposal to eliminate the
6 shortfall.

7 Section 3. That § 13-28-40 be amended to read as follows:

8 13-28-40. An enrollment options program is established to enable any South Dakota
9 kindergarten through twelfth grade student to attend any public school that serves the student's
10 grade level in any South Dakota school district, subject to the provisions in §§ 13-28-40 to 13-
11 28-47, inclusive. For purposes of determining state aid to education as it relates to the provisions
12 of §§ 13-28-40 to 13-28-47, inclusive, fall enrollment as defined in § 13-13-10.1 is used to
13 compute foundation aid and ~~special~~ any small school adjustment as calculated pursuant to
14 subdivision 13-13-10.1(2C) to which a school district is entitled for any student participating
15 in this program is based on the fall enrollment of the student's resident school district or the
16 receiving district, whichever is greater. However, if a school district defined as sparse pursuant
17 to § 13-13-78 is the receiving district, the small school adjustment for all students enrolled in
18 that district is based on the fall enrollment of the sparse school district. Special education
19 average daily membership as defined in § 13-37-35.1 is used to determine funding for special
20 education.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

643R0602

HOUSE COMMERCE ENGROSSED NO. **HB 1222** - 2/17/2010

Introduced by: Representatives Sly, Hunhoff (Bernie), Iron Cloud III, Pitts, and Rave and
Senators Merchant, Dempster, Gant, Jerstad, Miles, and Schmidt

1 FOR AN ACT ENTITLED, An Act to exempt persons selling certain foods at farmers' markets
2 from licensure requirements and to establish other requirements for the sale of those foods.

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

4 Section 1. That chapter 34-18 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 No person selling whole, intact fresh fruits or vegetables at a farmer's market, roadside
7 stand, or similar venue is required to be licensed pursuant to this chapter.

8 Section 2. That chapter 34-18 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 No person selling non-temperature-controlled baked goods or non-temperature-controlled
11 home-processed canned goods at a farmer's market, roadside stand, or similar venue is required
12 to be licensed pursuant to this chapter. However, any non-temperature-controlled baked goods
13 or non-temperature-controlled home-processed canned goods sold at a farmer's market, roadside
14 stand, or similar venue shall meet the requirements of section 3, if applicable, and section 4 of



1 this Act.

2 Section 3. That chapter 34-18 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 No canned good may be sold unless the pH level is 4.6 or less or the water activity level is
5 .85 or less. A third-party processing authority with knowledge of the thermal processing
6 required of food in hermetically-sealed containers shall verify the method of processing and that
7 the pH or water activity threshold levels are met. The processing authority shall provide any
8 such verification in writing.

9 Section 4. That chapter 34-18 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 No baked good or canned good may be sold unless it has a label that includes the following
12 information:

- 13 (1) Name of the product;
- 14 (2) Producer and contact information;
- 15 (3) Date the product was made or processed;
- 16 (4) Ingredients; and
- 17 (5) Disclaimer. The disclaimer shall state: "This product was not produced in a
18 commercial kitchen. It has been home-processed in a kitchen that may also process
19 common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish, and
20 crustacean shellfish."

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

388R0666

HOUSE HEALTH AND HUMAN SERVICES ENGROSSED NO. **HB 1223** - 2/16/2010

Introduced by: Representatives Bolin, Burg, Dennert, Engels, Feickert, Feinstein, Frerichs, Hunhoff (Bernie), Hunt, Iron Cloud III, Kirschman, Krebs, Lange, Lederman, Schlekeway, Schrempp, Solberg, Sorenson, Street, and Thompson and Senators Merchant, Jerstad, Kloucek, Maher, Nesselhuf, and Peterson

1 FOR AN ACT ENTITLED, An Act to provide procedures by which adopted persons may obtain
2 their original birth certificates and the contact preference of birth parents.

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

4 Section 1. That § 34-25-16.4 be amended to read as follows:

5 34-25-16.4. When a new certificate of birth is established pursuant to §§ 34-25-15 to 34-25-
6 16.2, inclusive, the original certificate of birth together with the adoption information or other
7 evidence upon which a new certificate is made shall be sealed, filed, and may be opened only
8 upon order of a court of competent jurisdiction, or by the secretary of health for purposes of
9 properly administering the vital registration system or for purposes of complying with section
10 2 of this Act.

11 Section 2. That chapter 34-25 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any adopted person who is at least eighteen years of age and who was born in this state,



1 such adopted person's attorney, or if such adopted person is deceased, any descendant of such
2 adopted person may obtain a copy of that person's original certificate of birth from the
3 Department of Health by filing a written application with, and providing appropriate proof of
4 identification to, the department. Upon receipt of the written application and proof of
5 identification, the department shall issue a noncertified copy of the unaltered original certificate
6 of birth to the applicant. The department may charge the same fee as provided pursuant to § 34-
7 25-52. If a parent has indicated a no contact preference no original birth certificate may be
8 obtained. The Department of Health may promulgate rules, pursuant to chapter 1-26, for the
9 administration of this section.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

861R0554

HOUSE ENGROSSED NO. **HB 1227** - 2/22/2010

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Representatives Solberg, Blake, Feinstein, Gibson, Killer, Schlekeway, and Vanderlinde and Senators Gant and Ahlers

1 FOR AN ACT ENTITLED, An Act to permit townships to provide certain health, life, and
2 disability income insurance benefits.

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

4 Section 1. That chapter 8-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 A township may enroll in any group health insurance plan, group life insurance plan, or
7 group disability income insurance plan permitted by law to be offered in this state for any
8 employee of the township who is employed for a minimum of one thousand forty hours per year
9 by the township. The township may pay all or part of the necessary premiums for the employees
10 for the insurance programs allowed by this section. However, no township supervisor or officer
11 is eligible to be covered by any group health insurance plan, group life insurance plan, or group
12 disability insurance plan.



State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

348R0299

HOUSE TAXATION ENGROSSED NO. **HB 1246** - 2/18/2010

Introduced by: Representatives Frerichs, Brunner, Burg, Cronin, Engels, Hunhoff (Bernie),
Killer, Kirkeby, Noem, Rausch, Rounds, Russell, and Verchio and Senators
Rhoden, Knudson, Merchant, and Turbak Berry

1 FOR AN ACT ENTITLED, An Act to revise the definition of new business facilities that are
2 eligible for certain tax refunds and to declare an emergency.

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

4 Section 1. That § 10-45B-1.1 be amended to read as follows:

5 10-45B-1.1. For the purposes of this chapter, the term, new business facility, means a new
6 building or structure or the expansion of an existing building or structure, including a power
7 generation facility, the construction of which is subject to the contractor's excise tax pursuant
8 to chapter 10-46A or 10-46B. A new business facility does not include any building or structure:

- 9 (1) Used predominantly for the sale of products at retail, other than the sale of electricity
10 at retail, to individual consumers;
- 11 (2) Used predominantly for residential housing or transient lodging;
- 12 (3) Used predominantly to provide health care services; ~~or~~
- 13 (4) That is not subject to ad valorem real property taxation or equivalent taxes measured
14 by gross receipts; or



1 (5) Used predominantly for the transportation or transmission of oil or crude oil by
2 means of a pipeline.

3 Section 2. The provisions of this Act apply to any project where the construction date is after
4 the effective date of this Act.

5 The provisions of chapter 10-45B in effect prior to the effective date of this Act apply to any
6 project where the construction date was before the effective date of this Act.

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

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

714R0584

HOUSE LOCAL GOVERNMENT ENGROSSED NO. **HB 1249** - 2/18/2010

Introduced by: Representatives Greenfield, Blake, Feickert, Lust, Novstrup (David), Nygaard, Rounds, Schlekeway, and Vanneman and Senators Gillespie, Fryslie, Maher, and Olson (Russell)

1 FOR AN ACT ENTITLED, An Act to provide for the disposition of certain property sold at
2 auction but not claimed.

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

4 Section 1. That chapter 37-14 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Except as otherwise agreed to in writing by the purchaser and seller, or unless otherwise
7 provided for by advertised or announced terms at the auction premises on the day of the sale,
8 if the purchaser of any property at an auction sale has not removed the property from the auction
9 premises within ninety days after the date of the sale or has not otherwise taken physical
10 possession of the property within ninety days after the date of the sale, ownership of the property
11 reverts to the seller, and the payment is forfeited to the seller without further notice of action.

12 This section does not apply to any motor vehicle as defined in subdivision 32-3-1(11) or to any
13 state auction held pursuant to chapter 5-24A.



State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

537R0319

SENATE ENGROSSED NO. **SB 13** - 1/21/2010

Introduced by: The Committee on Local Government at the request of the State Board of Elections

1 FOR AN ACT ENTITLED, An Act to revise certain provisions concerning petitions and
2 elections.

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

4 Section 1. That § 2-1-10 be amended to read as follows:

5 2-1-10. Each person, who circulates and secures signatures to a petition to initiate a
6 constitutional amendment or other measure or to refer legislation to the electors, shall sign a
7 verification before filing the petition with the officer in whose office it is by law required to be
8 filed. The verification shall prescribe that the circulator made reasonable inquiry and, to the best
9 of the circulator's knowledge, each person signing the petition is a qualified voter of the state
10 in the county indicated on the signature line and that no state statute regarding the circulation
11 of petitions was knowingly violated. The State Board of Elections shall prescribe the form for
12 the verification. The verification shall be complete and the affixing of the circulator's signature
13 shall be witnessed and notarized by a notary public commissioned in South Dakota or other
14 officer authorized to administer oaths pursuant to § 18-3-1. Any person who falsely swears to
15 the verification provided for in this section is guilty of a Class 1 misdemeanor.



1 Section 2. That § 6-16-5 be amended to read as follows:

2 6-16-5. If the proposed district contains less than one thousand eligible voters as defined in
3 § 6-16-6, the county auditor shall set a date, time, and location for a meeting to be held within
4 the district to conduct an election on the question of formation of the special district. The date
5 may not be more than sixty days after the appropriate board declares that the application for
6 incorporation is valid. The auditor shall appoint three judges of election, one of whom shall
7 serve as the superintendent, to conduct the election. The vote upon the question of incorporation
8 shall be by ballot which conforms to a ballot for a statewide question except that the statement
9 required to be printed on the ballot shall be prepared by the state's attorney. After the vote is cast
10 and counted, the judges shall prepare a certification showing the whole number of ballots cast,
11 together with the number voting for and the number voting against incorporation, and shall
12 return the certification to the county auditor. If a majority, or if it is a water project district at
13 least sixty percent, of the votes cast on the question of formation is in favor, an election shall
14 be conducted by those present at the same meeting to elect the initial board of directors or
15 trustees.

16 Section 3. That § 6-16-5.2 be amended to read as follows:

17 6-16-5.2. If a majority, or if it is a water project district at least sixty percent, of the votes
18 cast in an election conducted pursuant to § 6-16-5.1 is in favor on the question of formation of
19 the special district, an election shall be conducted by the county auditor within sixty days after
20 the official canvass to elect the initial board of directors or trustees. The election shall be
21 conducted pursuant to Title 12. The county auditor shall publish a notice of vacancy no later
22 than fifty days prior to the election. Circulation of nominating petitions may begin upon
23 completion of the official canvass of the election to form the district. Nominating petitions shall
24 be filed with the county auditor by 5:00 p.m. at least thirty days before the election. The

1 nominating petitions shall contain signatures of at least twenty-five registered voters in the
2 district. Absentee ballots shall be made available to the voters no later than twenty days before
3 the date of election. The election shall be canvassed by the county commission.

4 Section 4. That § 7-18A-11 be amended to read as follows:

5 7-18A-11. The right to propose an ordinance or resolution shall be exercised by filing with
6 the auditor a petition in proper form containing the proposed ordinance or resolution, signed by
7 the required number of qualified voters of the county. The signer or circulator of the petition
8 shall add the signer's place of residence and the ~~date~~ month and day of signing. The signer's post
9 office box number may be given in lieu of a street address if the signer lives within a
10 municipality of the second or third class. ~~A date may be written in full or may be written using~~
11 ~~standard abbreviations, including numerals.~~

12 Section 5. That § 9-13-14.1 be amended to read as follows:

13 9-13-14.1. If a vacancy exists on a municipal governing body, the remaining members shall
14 appoint a replacement to serve until the next annual municipal election, or the vacancy may be
15 filled by special election for the remainder of the unexpired term as provided in § 9-13-14.2. In
16 the aldermanic form of municipal government, the appointment ~~must~~ shall be a person from the
17 same ward of the ~~first or second~~ class municipality. If electing a person to fill the remainder of
18 the unexpired term at an annual municipal election, the vacancy shall have occurred prior to the
19 publication required by § 9-13-6.

20 Section 6. That § 9-13-14.2 be amended to read as follows:

21 9-13-14.2. The governing body of any municipality may, by ordinance enacted prior to the
22 vacancy, require that any vacancy on the governing body or in the office of the mayor is to be
23 filled by a special election called for that purpose to be conducted as provided in § 9-13-14 and
24 this section. No such special election may be held less than ninety days before the annual

1 municipal election. The finance officer of the municipality shall publish a notice in the official
2 newspaper of the municipality stating that a vacancy exists, that the vacancy will be filled by
3 special election, the date of the election, and the time and place where nominating petitions may
4 be filed for the office. The notice shall be published once each week for two consecutive weeks
5 beginning at least sixty days before the date of the special election. Nominating petitions for the
6 vacancy shall be prepared and filed as provided in § 9-13-7, may not be circulated more than
7 sixty days before the date of the special election, and shall be filed at least thirty days before the
8 date of the special election. A notice of the special election shall be published as provided in
9 §§ 9-13-13 and 9-13-14.

10 Section 7. That § 9-13-25 be amended to read as follows:

11 9-13-25. In any municipality, the person having the highest number of votes for any office
12 shall be declared elected. However, the governing board of any municipality may, on or before
13 the first of October in the year preceding, approve an ordinance ~~prescribing the~~ requiring a
14 secondary election procedures as found in to be conducted pursuant to § 9-13-27.1 and section
15 8 of this Act.

16 Section 8. That chapter 9-13 be amended by adding thereto a NEW SECTION to read as
17 follows:

18 If a municipality has passed an ordinance requiring a secondary election and no candidate
19 in a race involving three or more candidates receives a majority of the votes cast in the race, a
20 secondary election shall be held three weeks from the date of the first election. At the secondary
21 election, the only persons voted for shall be the two candidates receiving the highest number of
22 votes at the first election. However, if there is a tie for second place in the first election and
23 there is no tie for first place, all tying second place candidates shall be placed along with the first
24 place candidate on the ballot for the secondary election. The secondary election shall be held

1 at the same polling places and shall be conducted, returned, and canvassed in the same manner
2 as the first election. The result shall be declared and entered in the minutes of the municipality
3 in the same manner as the first election. The person receiving the highest number of votes at the
4 secondary election is elected.

5 Section 9. That § 12-4-34 be amended to read as follows:

6 12-4-34. If a statute refers to registered voters, it does not include those in the inactive
7 registration file unless specifically included. However, any voter in the inactive registration file
8 may sign a petition.

9 Section 10. That § 12-4-37 be amended to read as follows:

10 12-4-37. The secretary of state shall establish a computerized system for maintaining and
11 utilizing the voter registration file and transmitting voter registration information from each
12 county auditor to the Office of the Secretary of State. ~~Each county auditor shall furnish the~~
13 ~~current master registration file of voters as provided in § 12-4-9 in computer format to the~~
14 ~~secretary of state by January 1, 2002.~~ Each county auditor shall transmit any changes thereafter
15 to the master registration file or the absentee voter log to the secretary of state on a daily basis.

16 Section 11. That § 12-6-51.1 be amended to read as follows:

17 12-6-51.1. If no candidate for United States Senate, United States House of Representatives,
18 or Governor in a race involving three or more candidates receives thirty-five percent of the votes
19 of the candidate's party, a secondary election shall be held three weeks from the date of the first
20 primary election. At the secondary election the only persons voted for shall be the two
21 candidates receiving the highest number of votes at the first election. However, if there is a tie
22 for second place in the first primary election and there is no tie for first place, all tying second
23 place candidates shall be placed along with the first place candidate on the ballot for the
24 secondary election. The secondary election shall be held at the same polling places, be

1 conducted, returned, and canvassed and the results declared in the same manner as the first
2 election. However, if the secondary election does not have a federal race, the electronic ballot
3 marking system is not required and hand-counted ballots may be used. The person receiving the
4 highest number of votes at the secondary election is nominated as the candidate for the party.

5 Section 12. That § 12-14-1.1 be amended to read as follows:

6 12-14-1.1. ~~It shall be the duty of officials~~ The official in charge of ~~a local elections to~~
7 election shall notify the county auditor at least ~~thirty~~ forty-five days preceding ~~their a local~~
8 ~~elections election~~, of the precinct, ward, representation area, or external boundary changes if any
9 have been made.

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

11 12-16-1. The county auditor shall provide printed ballots for ~~every~~ each election in which
12 the voters of the entire county participate. Except as provided in § 12-6-9, printed ballots for a
13 primary election shall contain the name of ~~every~~ each candidate who has filed for nomination
14 and is approved. The printed ballots for the election of officers shall contain the name of ~~every~~
15 each candidate whose nomination has been certified or filed with the county auditor in the
16 manner provided by law unless ~~they are~~ the candidate is deemed elected by having no
17 opposition. The names of the candidates shall appear on the ballot exactly as listed in the
18 declaration of candidacy of the candidates' nominating petitions. Sample ballots shall be printed
19 on paper of a different color from the official ballot but in the same form. The sample ballots
20 and official ballots shall be printed and in the possession of the county auditor not later than ~~six~~
21 ~~weeks~~ forty-five days prior to a primary or general election. The county auditor shall also
22 prepare the necessary ballots if any question is required to be submitted to the voters of the
23 county. Ballots for general elections shall be of the style and form prescribed in §§ 12-16-2 to
24 12-16-11, inclusive.

1 Section 14. That § 12-19-2 be amended to read as follows:

2 12-19-2. An absentee voter desiring to vote by mail may apply to the person in charge of the
3 election for an absentee ballot. The application or request shall be made in writing and be signed
4 by the applicant and shall state the applicant's voter registration address. The application or
5 request shall contain an oath verifying the validity of the information contained in the
6 application or request. The oath shall be administered by a notary public or other officer
7 authorized by statute to administer an oath. If the application or request does not contain an
8 oath, the application or request shall be accompanied by a copy of the voter's identification card
9 as required by § 12-18-6.1. The copy of the voter's identification card shall be maintained by the
10 person in charge of the election. However, the voter's identification card is not available for
11 public inspection. The application or request may be used to obtain an absentee ballot for all
12 elections in that calendar year conducted by the jurisdiction receiving the application or request
13 if so indicated. ~~If the application or request is from a voter identified as being covered by the~~
14 ~~Uniformed and Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1,~~
15 ~~2006, an absentee ballot shall be provided to the voter for each federal election through the next~~
16 ~~two general elections.~~ The ballot shall be sent to the voter's residence, as shown in the voter
17 registration file or any temporary residence address designated in writing by the voter, at the
18 time of applying for the absentee ballot. If the application or request is for a primary, general,
19 or other statewide election from a voter identified as being covered by the Uniformed and
20 Overseas Citizens Absentee Voting Act (42 U.S.C. 1973ff-1) as of January 1, 2010, the voter
21 may designate on the application for the ballot to be sent electronically. The person in charge
22 of the election shall stamp the application with the date it was received. The person in charge
23 of the election shall preserve a record of the name, mailing address, and voting precinct of each
24 applicant and, except as provided by § 12-19-45, deliver a copy of the record to the

1 superintendent of the election board of the home precinct of the applicant.

2 Section 15. That § 12-19-10 be amended to read as follows:

3 12-19-10. Upon receipt of the sealed return envelope containing the voted ballots, the person
4 in charge of the election shall keep it in a safe place without opening the envelope or breaking
5 the seal thereof and shall, except as provided by § 12-19-42, deliver it to the precinct
6 superintendent of election of the voter's home precinct. The person in charge of the election
7 shall have the absentee ballots delivered with the election supplies, or if received later, then
8 prior to the close of the polls. If the election board is not otherwise engaged in official duties,
9 or if there are absentee ballots not processed when the polls close, immediately thereafter, the
10 board shall carefully compare the statement on the reverse side of the official return envelope
11 with the written application received from the officer in charge of the election without opening
12 or breaking the seal of the return envelope. If the ballot is contained in a combined absentee
13 ballot application/return envelope, the comparison of the statement and the application shall be
14 omitted. The board shall enter the voter's name on the election pollbook and mark the
15 registration list if:

- 16 (1) The ballots received were voted by the voter whose name appears on the statement;
17 (2) The voter is registered in such precinct and has not previously voted in that precinct
18 at the election; and
19 (3) The written application and statement were both signed by the voter.

20 The board shall then open the envelope without opening, unfolding or examining the ballots
21 the envelope may contain, stamp the ballots with the official stamp, and deposit the ballots with
22 the other ballots cast at the election. If the board determines that an absentee ballot envelope
23 cannot be opened because the envelope does not meet the requirements for opening, the reason
24 shall be written on the envelope, signed by a member of the board, and the envelope placed in

1 a larger envelope for unopened absentee ballots. No person may, prior to the counting of the
2 votes, open, unfold or examine any ballot, or make any communication to any person
3 concerning the markings or contents of the ballot. A violation of the preceding sentence is a
4 Class 2 misdemeanor.

5 Section 16. That § 12-19-12 be amended to read as follows:

6 12-19-12. If an absentee ballot is delivered to a polling place after the polls are closed, the
7 absentee ballot may not be counted or opened, ~~but a member of the precinct election board shall~~
8 ~~immediately endorse on the envelope the following: Received after closing of polls, and sign~~
9 ~~the person's signature thereto and return the absentee ballot with the other ballots to the officer~~
10 ~~in charge of the conduct of the election.~~

11 Section 17. That § 12-19-14 be amended to read as follows:

12 12-19-14. Any voter who, having procured an official ballot or ballots or Uniformed and
13 Overseas Citizens Absentee Voting Act (UOCAVA) ballot link as provided in §§ 12-19-1 to
14 12-19-12, inclusive, intentionally disposes ~~them~~ of a ballot in any manner other than as provided
15 in ~~said~~ such sections or provides the UOCAVA ballot link to any other person is guilty of a
16 Class 2 misdemeanor. The UOCAVA ballot link is the internet URL for accessing an
17 electronically provided absentee ballot.

18 Section 18. That § 12-19-47 be amended to read as follows:

19 12-19-47. The Absentee Ballot Counting Board, during the time prescribed in § 12-19-46,
20 shall ~~carefully compare the statement on the reverse side of the official return envelope with the~~
21 ~~written application received from the officer in charge of the election without opening or~~
22 ~~breaking the seal of the return envelope. If the ballot is contained in a combined absentee ballot~~
23 ~~application/return envelope, the comparison of the statement and the application shall be~~
24 ~~omitted. If the board is satisfied that the ballots received were voted by the voter whose name~~

1 ~~appears on the statement and that the voter is registered in such precinct and has not previously~~
2 ~~voted in that precinct at the election, the board shall enter the voter's name on the election~~
3 ~~pollbook. After opening the envelope without opening, unfolding, or examining the ballots~~
4 ~~contained in the envelope, the board shall affix to the ballots the official stamp and deposit the~~
5 ~~ballots in the proper ballot box and count the ballots in the manner prescribed by the State Board~~
6 ~~of Elections. No person, prior to the counting of the votes, may open, unfold, or examine any~~
7 ~~ballot, or make any communication to any person concerning the markings or contents of the~~
8 ~~ballot. A violation of the preceding sentence is a Class 2 misdemeanor process each absentee~~
9 ~~ballot as required by § 12-19-10.~~

10 Section 19. That § 12-19-48 be amended to read as follows:

11 12-19-48. If an absentee ballot is delivered to an absentee ballot counting board after the
12 polls are closed the absentee ballot may not be counted or opened; ~~but a member of the absentee~~
13 ~~ballot counting board shall immediately endorse on the envelope the following: Received after~~
14 ~~closing of polls, and sign the person's name on the envelope and return the absentee ballot with~~
15 ~~the other ballots to the officer in charge of the election.~~

16 Section 20. That § 12-20-2.1 be amended to read as follows:

17 12-20-2.1. If the ballot box ~~for any precinct~~ is opened ~~prior to~~ for ballot counting at the
18 precinct, each provisional ballot envelope and each unopened absentee ballot shall be removed,
19 placed, and sealed in the provisional or unopened absentee ballot return envelope and returned
20 ~~unopened~~ to the person in charge of the election with the other election supplies.

21 Section 21. That § 12-20-7 be amended to read as follows:

22 12-20-7. Any ballot or part of a ballot from which it is impossible to determine the voter's
23 choice by using standards defined by the State Board of Elections shall be void and may not be
24 counted. ~~If the voter's marks on a ballot are sufficiently plain to determine the voter's intention~~

1 ~~it is the duty of the precinct deputies to count such vote.~~ The State Board of Elections shall
2 promulgate rules, pursuant to chapter 1-26, defining standards for determining voter intent.

3 Section 22. That § 12-21-24 be amended to read as follows:

4 12-21-24. ~~It shall be the duty of any person or official having custody of ballot boxes~~
5 ~~containing the ballots to be recounted to produce the same before such board for the purposes~~
6 ~~of such recount upon notice so to do from the county auditor~~ The county auditor shall provide
7 the pollbooks, automatic tabulating system election night print outs, sealed ballot boxes, any
8 provisional ballots which were determined countable pursuant to § 12-20-13.2, any uncounted
9 provisional ballots, and any unopened absentee ballot envelopes to the recount board. The
10 recount board is authorized to make a determination whether any provisional ballots or absentee
11 ballots which were determined not to be countable, shall be counted, and those votes shall be
12 added to the recount tally.

13 Section 23. That § 12-22-2 be amended to read as follows:

14 12-22-2. ~~Such~~ A contest may be instituted by any candidate for a public office, other than
15 a candidate for ~~United States Senator, Representative in Congress, member of the Legislature;~~
16 ~~or delegate to, or representative in any other body, convention, committee, or tribunal, which~~
17 ~~has the final right to determine the qualifications of its members. Legislative contests.~~ A
18 legislative contest shall be instituted as provided in § 12-22-26.

19 Section 24. That § 13-7-6 be amended to read as follows:

20 13-7-6. No candidate for elective school board membership may be nominated unless such
21 person is a resident voter of the school district and unless a nominating petition has been filed
22 on such person's behalf with the business manager of the school district. The nominating
23 petition shall be filed no later than five p.m. on the Friday thirty-nine days before the date of the
24 election. ~~However, if the nominating petition is from a candidate for a vacancy on a new school~~

1 ~~board within a newly created school district entity pursuant to § 13-6-62, the nominating petition~~
2 ~~shall be filed no later than thirty days prior to the date of the election.~~ The petition is considered
3 filed if it is mailed by registered mail by five p.m. on the Friday thirty-nine days before the
4 election. A formal declaration of a candidate shall be signed by the candidate before the
5 circulation of the petition. The petition shall be signed by not less than twenty voters of the
6 school district or if the school district is divided into school board representation areas, the
7 petition shall be signed by not less than twenty voters who reside within the school board
8 representation area. No petition may be circulated until ten weeks prior to the election. There
9 shall be added by either the signer or the circulator the signer's place of residence and date of
10 signing. The petition shall be verified under oath by the person circulating it. The filing of the
11 nominating petition shall constitute nomination and will entitle the candidate to have the
12 candidate's name placed on the ballot for the term the candidate specifies on the petition only
13 upon verification signed by the business manager that the nominating petition contains the
14 minimum number of signatures and that the candidate is a resident voter.

15 Section 25. That chapter 13-7 be amended by adding thereto a NEW SECTION to read as
16 follows:

17 If the nominating petition is from a candidate for a vacancy on a new school board within
18 a newly created school district entity pursuant to § 13-6-62, the nominating petition shall be
19 circulated no more than sixty days prior to the date of the election and filed no later than thirty
20 days prior to the date of the election.

21 Section 26. That § 31-12A-15 be amended to read as follows:

22 31-12A-15. In each road district an annual election of officers shall be held on the first
23 Tuesday in May at a place in the district as the board of trustees shall designate. ~~The~~ Unless
24 otherwise specified, the election shall be conducted according to chapter 8-3, at a meeting of the

1 registered voters who reside in the road district.

2 Section 27. That § 34-47-2 be amended to read as follows:

3 34-47-2. If the voters of both the rural fire protection district and ambulance district approve
4 a consolidation pursuant to § 34-47-1, the districts shall be consolidated into an emergency
5 services district on the following January first. After the voters of each district approve the
6 consolidation and before the consolidation takes effect, the voters of both districts shall meet
7 together and elect a five-member board of emergency services. Board members shall serve until
8 their successors are elected and qualified. Three members of the first board shall serve two-year
9 terms and two members shall serve one-year terms, to be determined by lot at the first board
10 meeting. Subsequent members of the board shall be elected by the voters at the annual meeting
11 to serve two-year terms. Unless otherwise specified, an emergency services district board
12 member election shall be conducted pursuant to chapter 8-3. At its first meeting each year the
13 board shall elect a president, vice president, and secretary-treasurer.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0244

HOUSE EDUCATION ENGROSSED NO. **SB 24** 2/3/2010

Introduced by: The Committee on Education at the request of the Department of Education

1 FOR AN ACT ENTITLED, An Act to establish standards for teaching, to require teacher
2 evaluations, and to provide for the development of a model evaluation instrument.

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

4 Section 1. The Board of Education shall, no later than July 1, 2011, promulgate rules
5 pursuant to chapter 1-26 to establish minimum professional performance standards for certified
6 teachers in South Dakota public schools, and to establish best practices for the evaluation of the
7 performance of certified teachers that may be used by individual school districts.

8 Section 2. Any public school district seeking state accreditation shall evaluate the
9 performance of each certified teacher in years one through three not less than annually, and each
10 certified teacher in the fourth contract year or beyond, not less than every other year.

11 Each school district shall adopt procedures for evaluating the performance of certified
12 teachers employed by the school district that:

- 13 (1) Are based on the minimum professional performance standards established by the
14 Board of Education pursuant to section 1 of this Act;
- 15 (2) Require multiple measures;



1 (3) Serve as the basis for programs to increase professional growth and development of
2 certified teachers; and

3 (4) Include a plan of assistance for any certified teacher, who is in the fourth or
4 subsequent year of teaching, and whose performance does not meet the school
5 district's performance standards.

6 Section 3. A work group appointed by the secretary of education shall provide input in
7 developing the standards and shall develop a model evaluation instrument that may be used by
8 school districts. The work group shall consist of the following:

9 (1) Three teachers: one from an elementary school, one from a middle school, and one
10 from a high school;

11 (2) Three principals: one from an elementary school, one from a middle school, and one
12 from a high school;

13 (3) Two superintendents;

14 (4) Two school board members;

15 (5) Four parents who have students in various levels of the K-12 system:

16 (6) One representative of the South Dakota Education Association;

17 (7) One representative of the School Administrators of South Dakota; and

18 (8) One representative of the Associated School Boards of South Dakota.

19 Section 4. Nothing in this Act may diminish a school district's right to not renew a teacher's
20 contract pursuant to § 13-43-6.3.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

156R0357

SENATE ENGROSSED NO. **SB 68** - 2/3/2010

Introduced by: Senators Gant and Miles and Representatives Kirkeby and Feickert

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to standards for new
2 construction.

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

4 Section 1. That § 11-10-5 be amended to read as follows:

5 11-10-5. If the governing body of any local unit of government adopts any ordinance
6 prescribing standards for new construction, ~~such~~ the ordinance shall comply with the ~~2006~~ 2009
7 edition of the International Building Code as published by the International Code Council,
8 Incorporated. The governing body may amend, modify, or delete any portion of the International
9 Building Code before enacting such an ordinance. Additional deletions, modifications, and
10 amendments to the municipal ordinance may, ~~from time to time~~, be made by the governing body
11 and are effective upon their adoption and filing with the municipal finance officer. Additional
12 deletions, modifications, and amendments to the county ordinance may, ~~from time to time~~, be
13 made by the governing body, and are effective upon their adoption and filing with the county
14 auditor. ~~The~~ No ordinance may ~~not~~ apply to mobile or manufactured homes as defined in
15 chapter 32-7A which are constructed in compliance with the applicable prevailing standards of



1 the United States Department of Housing and Urban Development at the time of construction.
2 No ordinance may require that any fire sprinkler be installed in a single family dwelling. No
3 ordinance may apply to any specialty resort or vacation home establishment as defined in
4 chapter 34-18 that is constructed in compliance with the requirements of Group R-3 of the 2009
5 edition of the International Building Code.

6 Section 2. That § 11-10-6 be amended to read as follows:

7 11-10-6. The design standard for any new construction commenced after July 1, 2009,
8 within the boundaries of any local unit of government that has not adopted an ordinance
9 prescribing standards for new construction pursuant to § 11-10-5 shall be based on the ~~2006~~
10 2009 edition of the International Building Code as published by the International Code Council,
11 Incorporated. Each local unit of government may adopt an ordinance allowing local
12 administration and enforcement of the design standard. The provisions of this section do not
13 apply to new construction for any one or two family dwelling, mobile or manufactured home,
14 townhouse, or farmstead and any accessory structure or building thereto. For purposes of this
15 section the term, farmstead, means a farm or ranch, including any structure or building located
16 on the land. The provisions of this section do not apply to any mobile or manufactured home
17 as defined in chapter 32-7A which is used for purposes other than residential that is constructed
18 in compliance with the applicable prevailing standards of the United States Department of
19 Housing and Urban Development at the time of construction if the structure complies with
20 applicable accessibility standards for the occupancy intended. The provisions of this section do
21 not apply to any specialty resort or vacation home establishment as defined in chapter 34-18 that
22 is constructed in compliance with the requirements of Group R-3 of the 2009 edition of the
23 International Building Code.