House
Daily Reader

Tuesday, February 16, 2010

Bills Included				
HB 1014	HB 1093	HB 1104	HB 1119	HB 1180
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State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

400R0248

SENATE AGRICULTURE AND NATURAL RESOURCES
ENGROSSED NO. HB 1014 - 2/9/2010

Introduced by: The Committee on Agriculture and Natural Resources at the request of the Department of Game, Fish and Parks

FOR AN ACT ENTITLED, An Act to define trophy and nontrophy antelope, mule deer, white-tailed deer, and elk, and establish civil damages for the unlawful taking of trophy animals.

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

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

Terms, as used in this Act, mean:

(1) "Trophy antelope," any antelope with at least one horn greater than fifteen inches in length, as measured along the outside curve from base to tip;

(2) "Trophy mule deer," any mule deer having a Boone and Crockett gross score of one hundred seventy points or greater;

(3) "Trophy white-tailed deer," any white-tailed deer having a Boone and Crockett gross score of one hundred fifty points or greater; and

(4) "Trophy elk," any elk having a Boone and Crockett gross score of three hundred twenty points or greater.

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The Boone and Crockett score shall be determined using the Boone and Crockett Club's official scoring system for North American big game trophies as provided in Records of North American Big Game, 12th Edition, The Boone & Crockett Club, Missoula, MT, 2005. For purposes of this section, antlers or skulls may be measured at any time; no drying period is required.

Section 2. That chapter 41-1 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this Act, any antelope, mule deer, white-tailed deer, or elk not defined as a trophy is considered nontrophy.

Section 3. That § 41-1-5.1 be amended to read as follows:

41-1-5.1. Any person, other than a minor under the age of sixteen years, who willfully and unlawfully kills, destroys, takes, or possesses in this state any wild animal designated by this section:

(1) Without an applicable and valid big game or small game license; ~~or~~

(2) At a time or place when and where taking or possession of such regulated wild animal is prohibited; ~~or~~

(3) In excess of the legal limit of big game if exceeded by one or more; or

(4) In excess of the legal daily or possession limit of small game bird or fish if exceeded by two or more;

is liable to the state for civil damages.

The civil damages are five thousand dollars for each nontrophy elk, mountain lion, ~~or~~ buffalo, trophy antelope, trophy mule deer, or trophy white-tailed deer; ten thousand dollars for each mountain goat ~~or~~, mountain sheep, or trophy elk; one thousand dollars for each nontrophy mule deer, nontrophy white-tailed deer, nontrophy antelope, or bobcat; two hundred dollars for

each turkey; two hundred dollars for each paddlefish; one hundred dollars for each small game bird; and fifty dollars for each fish for any species, other than paddlefish, with an established daily limit of less than twenty-five.

If a person has taken or is in possession of more than two times the lawful daily or possession limit of a regulated wild animal, such person is liable for twice the damages provided in this section.

However, the return uninjured of the wild animal to the place where captured, or to such other place as the Department of Game, Fish and Parks may direct, constitutes a discharge of such damages. Moreover, the provisions of this section do not apply to any person, who, after providing written notice received by the Department of Game, Fish and Parks, forty-eight hours in advance, takes reasonable actions to protect the person's land, livestock, or crops from serious and extraordinary damages caused by elk, deer, antelope, wild turkey, or mountain lion. Nothing in this section or any other provision of law prevents any person from taking any action necessary to protect the personal safety of that person or any other person who is in immediate danger of harm from a mountain lion or other animal specified in this section.

Section 4. That § 41-1-5.2 be amended to read as follows:

41-1-5.2. The liquidated damages provided for in this chapter and taxable costs may be collected by the Department of Game, Fish and Parks in a civil suit brought by it, in the name of the State of South Dakota, against the person claimed to be liable therefor. Conviction of a criminal offense for the same incident leading to the charges specified in § 41-1-5.1 is prima facie evidence of the defendant's civil liability. Failure to obtain conviction on a criminal charge is not a bar to a separate civil action for such liquidated damages.

The department, collecting such liquidated damages and taxable costs <u>for wild animals other than trophy antelope, trophy mule deer, trophy white-tailed deer, and trophy elk as defined in</u>

section 1 of this Act, shall deposit them in the Department of Game, Fish and Parks fund. Any other public agency or department of the state, collecting liquidated damages and taxable costs for wild animals other than trophy antelope, trophy mule deer, trophy white-tailed deer, and trophy elk as defined by section 1 of this Act, shall remit the moneys collected, less the agreed collection fee, to the state treasurer who shall deposit them in the Department of Game, Fish and Parks fund.

From the civil damages collected for each trophy antelope, trophy mule deer, trophy white-tailed deer, and trophy elk as defined in section 1 of this Act, an amount equal to the liquidated damages for a nontrophy antelope, nontrophy mule deer, nontrophy white-tailed deer, or nontrophy elk as defined in section 2 of this Act, as the case may be, shall be deposited in the Game, Fish and Parks fund with the excess to be deposited in the general fund of the school district in which the trophy animal was illegally taken.

The judgment and liquidated damages may be collected by an agent. Fees to agents authorized to collect on a judgment under this section may not exceed fifty percent of the total amount collected. With approval of the department, agreed collection fees may be deducted from the moneys collected when remitted or may be paid on warrants drawn by the state auditor on itemized vouchers approved by the secretary of game, fish and parks and submitted simultaneously with the moneys collected.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

595R0514

HOUSE STATE AFFAIRS

ENGROSSED NO. HB 1093 - 2/10/2010

Introduced by: Representatives Hunt, Gibson, and Lust and Senators Hunhoff (Jean), Gant, and Hundstad

FOR AN ACT ENTITLED, An Act to revise the open meeting requirement to permit the use of teleconferencing for rule-making and other purposes.

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

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

1-25-1. ~~Except as otherwise provided by law, the official meetings of the state and the political subdivisions thereof, including all related boards, commissions and other agencies, and the official meetings of boards, commissions and agencies created by statute or which are nontaxpaying and derive a source of revenue directly from public funds, shall be open to the public, except as provided in this chapter. It does not constitute an official meeting if members of a political subdivision of this state are attending a meeting of the state or one of its political subdivisions, a board, a commission, an association, an agency, or any other public entity for which public notice is provided pursuant to § 1-25-1.1 for the purpose of providing information or observing, and the notice requirements in § 1-25-1.1 do not apply. Meetings, including executive or closed meetings may be conducted by teleconference. Members shall be deemed~~

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~~present if they answer present to the roll call taken by teleconference. Any vote at a meeting held by teleconference shall be taken by roll call. Except for executive or closed meetings held by teleconference, there shall be provided one or more places at which the public may listen to and participate in the proceeding. Except for executive or closed meetings held by teleconference of related boards and commissions of the state, there shall be provided two or more places at which the public may listen to and participate in the proceeding. Except for the Digital Dakota Network, no teleconference may be used in conducting hearings or taking final disposition pursuant to § 1-26-4. Teleconference meetings are subject to the notice provisions of chapter 1-25.~~ The official meetings of the state, its political subdivisions, and public bodies are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public. A political subdivision or public body includes any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state vested with the authority to exercise any portion of the state's sovereignty. A political subdivision or public body may be created by statute, is nontaxpaying, or derives a source of revenue from public funds.

It is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference shall be taken by roll call.

When the state, a political subdivision, or a public body conducts an official meeting by

teleconference, the state, the political subdivision, or public body shall provide one or more places at which the public may listen to and participate in the teleconference meeting. The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting.

A violation of this section is a Class 2 misdemeanor.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

682R0391

HOUSE JUDICIARY ENGROSSED NO. HB 1104 -
2/10/2010

Introduced by: Representatives Deadrick and Juhnke and Senator Garnos

FOR AN ACT ENTITLED, An Act to limit the source of recovery in certain civil actions for childhood sexual abuse injuries.

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

Section 1. That § 26-10-25 be amended to read as follows:

26-10-25. Any civil action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse shall be commenced within three years of the act alleged to have caused the injury or condition, or three years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by the act, whichever period expires later. <u>However, no person who has reached the age of thirty-five years may recover damages from any person or entity other than the person who perpetrated the actual act of sexual abuse.</u>

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State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

736R0408

HOUSE JUDICIARY ENGROSSED NO. HB 1119 -
2/10/2010

Introduced by: Representatives Hoffman, Bolin, Brunner, Elliott, Engels, Kirkeby, Kopp, Krebs, Noem, Novstrup (David), Russell, Turbiville, and Vanderlinde and Senators Gray, Abdallah, Ahlers, Bartling, Brown, Dempster, Fryslie, Gant, Kloucek, Merchant, and Tieszen

FOR AN ACT ENTITLED, An Act to prohibit certain acts of sexual penetration and contact between certain school employees and students and to provide penalties therefor.

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

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

No person who is employed at any high school or secondary school may knowingly engage in an act of sexual penetration with any sixteen or seventeen year old person who is currently a student at the same school district or any private school system. Any violation of this section is a Class 5 felony.

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

No person who is employed at any high school or secondary school may knowingly engage in an act of sexual contact with any sixteen or seventeen year old person who is currently a

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student at the same school district or any private school system. Any violation of this section is a Class 6 felony.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

780R0271

HOUSE COMMERCE ENGROSSED NO. HB 1180 - 2/10/2010

Introduced by: Representatives Conzet, Cronin, Gosch, Greenfield, Kirkeby, Lust, Novstrup (David), Olson (Ryan), Rausch, Sly, and Verchio and Senators Adelstein and Tieszen

FOR AN ACT ENTITLED, An Act to provide for the issuance of an on-sale license and malt beverage license for the county fairgrounds and to authorize counties to issue an additional on-sale license.

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

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

Any county operating a county fairgrounds may, by resolution, without an election, but subject to referendum, make application for the issuance of an on-sale license, including a malt beverage retailer's license, at the county fairgrounds. The selling, serving, or dispensing of any alcoholic beverage at the county fairgrounds may not occur more than one hour before the commencement of any event at the county fairgrounds or at any time after the event is concluded. A license issued pursuant to this section may not be transferred. The license shall be issued without regard to the population limitations established pursuant to §§ 35-4-11 and 35-4-11.1.

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State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

861R0507

HOUSE TAXATION ENGROSSED NO. HB 1197 -
2/11/2010

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

Introduced by: Representatives Feickert, Burg, Cronin, Feinstein, Frerichs, Gibson, Hunhoff (Bernie), Kirkeby, Kirschman, Lange, Lederman, Street, and Thompson and Senators Hundstad, Abdallah, Adelstein, Bartling, Kloucek, and Peterson

FOR AN ACT ENTITLED, An Act to revise certain provisions concerning railroad tax credits.

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

Section 1. That § 10-28-21.2 be amended to read as follows:

10-28-21.2. Any publicly operated railroad or railway corporation operating over rail lines owned by the publicly operated railroad or railway corporation located within this state may claim a credit against the tax levied on such rail lines for amounts that the railroad or railway corporation has certified as having been expended in the replacement, improvement, and repair of such rail lines. Only those expenses of a capital nature may be certified as an expense eligible for a credit pursuant to this section. The certification required by this section shall be on forms provided by the Department of Revenue and Regulation. The labor and material expenses certified pursuant to this section shall be itemized separately by rail line and mile post locations. The credit provided in this section shall be applied proportionally across the railroad's entire mainline within this state. The credit shall be applied to tax liability over a three-year period in

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an amount equal to thirty-three and one-third percent the first year following certification; thirty-three and one-third percent of such an amount shall carry forward into the second year following certification; and thirty-three and one-third percent shall carry forward into the third year following certification. Each year's carryover shall be accumulated as a tax credit with other years' annual tax credits. No credit may be given for ~~the~~:

(1) The repair or replacement of railway line necessitated by washout, fire, or train derailment~~. No credit may be given for that~~;

(2) That portion of a project that is funded with state or federal grant funds or paid for by any third party~~. If any rail line goes over ten million gross ton miles of revenue freight per mile annually in a calendar year, the rail line may not receive a credit pursuant to this section in the following calendar year~~; or

(3) Any expenses of a capital nature that are made on a segment of the rail line that exceeds ten million gross ton miles of revenue freight in the previous calendar year.

State of South Dakota

EIGHTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2010

580R0275

HOUSE HEALTH AND HUMAN SERVICES

ENGROSSED NO. HB 1231 - 2/11/2010

Introduced by: Representatives Lust, Blake, Boomgarden, Conzet, Curd, Cutler, McLaughlin, Moser, Novstrup (David), Peters, Pitts, Rausch, Rave, Schlekeway, Sly, Steele, Vanderlinde, and Vanneman and Senators Miles, Adelstein, Dempster, Hunhoff (Jean), Knudson, Nelson, Tieszen, and Vehle

FOR AN ACT ENTITLED, An Act to provide for the monitoring of the prescribing and dispensing of controlled substances.

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

Section 1. Terms used in this Act mean:

(1) "Administer," the direct application of a controlled substance to the body of a patient. The term does not include the prescribing of a controlled substance for administration by the patient or someone other than the health care provider;

(2) "Board," the Board of Pharmacy;

(3) "Central repository," a place where electronic data related to the prescribing and dispensing of controlled substances is collected;

(4) "Controlled substance," any drug, substance, or immediate precursor as provided in schedules II through IV pursuant to §§ 34-20B-11 to 34-20B-26, inclusive;

(5) "De-identified information," health information that is not individually identifiable

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information because an expert has made that determination pursuant to 45 C.F.R. 164.514, or direct identifiers and specified demographic information have been removed in accordance with the requirements of that section;

(6) "Dispense," to deliver a controlled substance to an ultimate user by or pursuant to the lawful order of a health care provider, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for delivery;

(7) "Dispenser," any person who delivers a controlled substance to the ultimate user, but does not include:

(a) A licensed hospital pharmacy that provides a controlled substance for the purpose of inpatient hospital care;

(b) A licensed health care provider or other authorized individual in those instances when the practitioner administers a controlled substance to a patient; or

(c) A licensed veterinarian;

(8) "Individually identifiable health information," the meaning set forth in 45 C.F.R. 160.103;

(9) "Patient," any individual or owner of an animal who is the ultimate user of a controlled substance for whom a prescription is issued and for whom a controlled substance is dispensed;

(10) "Prescriber," an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice. The term does not include a veterinarian;

(11) "Program," the prescription drug monitoring program established by this Act.

Section 2. The board shall establish and maintain a prescription drug monitoring program

to monitor the prescribing and dispensing of all controlled substances. The program shall utilize a central repository, to which each dispenser shall submit, by electronic means, information regarding each prescription dispensed for a controlled substance. The information submitted for each prescription shall include all of the data elements in the 2005 version of the electronic reporting standard for prescription monitoring programs, version 003, release 000, of the American Society for Automation in Pharmacy.

Section 3. Each dispenser shall submit the information required by this Act to the central repository at least once each week unless the board waives this requirement for good cause shown by the dispenser.

Section 4. The board may grant an extension of the time in which a dispenser must report the information required by section 2 of this Act to any dispenser that is unable to submit prescription information by electronic means because of one of the following occurrences:

(1) The dispenser suffers a mechanical or electronic failure or cannot report within the required time for other reasons beyond the dispenser's control;

(2) The central repository is unable to receive electronic submissions; or

(3) Good cause shown by a dispenser.

Section 5. Information submitted to the central repository is confidential and may not be disclosed except as provided in section 7 of this Act.

Section 6. The board shall establish and maintain procedures to ensure that the privacy, confidentiality, and security of patient information collected, recorded, transmitted, and maintained is not disclosed except as provided in section 7 of this Act.

Section 7. Unless disclosure is prohibited by law, the board may provide data in the central repository to:

(1) Any prescriber for the purpose of providing medical care to a patient, a dispenser for

the purpose of filling a prescription or providing pharmaceutical care for a patient, a prescriber or dispenser inquiring about the prescriber's or dispenser's own prescribing activity, or a prescriber or dispenser in order to further the purposes of the program;

(2) Any individual who requests the prescription information of the individual or the individual's minor child;

(3) Any state board or regulatory agency that is responsible for the licensing of individuals authorized to prescribe or dispense controlled substances if the board or regulatory agency is seeking information from the central repository that is relevant to an investigation of an individual who holds a license issued by that board or regulatory agency;

(4) Any local, state, and federal law enforcement or prosecutorial officials engaged in the enforcement of laws relating to controlled substances who seek information for the purpose of an investigation or prosecution of the drug-related activity or probation compliance of an individual;

(5) The Department of Social Services for purposes regarding the utilization of controlled substances by a medicaid recipient;

(6) Any insurer for purposes regarding the utilization of controlled substances by a claimant;

(7) Any judicial authority under grand jury subpoena or court order or equivalent judicial process for investigation of criminal violations of controlled substances laws;

(8) Any public or private entity for statistical, research, or educational purposes after the information is de-identified with respect to any prescriber, dispenser, or patient who received a prescription for a controlled substance; or

(9) Any peer review committee, which means any committee of a health care organization, composed of health care providers, employees, administrators, consultants, agents, or members of the health care organization's governing body, which conducts professional peer review.

Section 8. The board may charge a fee of ten dollars to any individual who requests information from the central repository pursuant to subdivision (2) of section 7 of this Act. The board may charge a fee of one hundred dollars to any person who requests information from the central repository pursuant to subdivision (8) of section 7 of this Act.

Section 9. The board shall maintain a record of each request for information from the central repository. The board may use the records to document and report statistics and outcomes. The board may provide records of the requests for information to:

(1) Any board or regulatory agency responsible for the licensing of individuals authorized to prescribe or dispense controlled substances that is engaged in an investigation of the individual who submitted the request for information from the central repository; and

(2) Any local, state, and federal law enforcement or prosecutorial official engaged in the enforcement of laws relating to controlled substances for the purpose of an active investigation of an individual who requested information from the central repository.

Section 10. The board may contract with another agency of this state, with an agency of another state, or with a private vendor to facilitate the effective operation of the prescription drug monitoring program. Any contractor is bound to comply with the provisions regarding confidentiality of prescription drug information in this Act and is subject to termination or sanction, or both, for unlawful acts.

Section 11. Nothing in this Act requires a prescriber or dispenser to obtain information about

a patient from the central repository prior to prescribing or dispensing a controlled substance. A prescriber, dispenser, or other health care provider may not be held liable in damages to any person in any civil action on the basis that the prescriber, dispenser, or other health care provider did or did not seek to obtain information from the central repository. Unless there is shown a lack of good faith, the board, a prescriber, dispenser, or any other person in proper possession of information provided under this Act is not subject to any civil liability by reason of:

(1) The furnishing of information under the conditions provided in this Act;

(2) The receipt and use of, or reliance on, such information;

(3) The fact that any such information was not furnished; or

(4) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

Section 12. The board shall review the information received by the central repository to determine if there is reason to believe:

(1) A prescriber or dispenser may have engaged in an activity that may be a basis for disciplinary action by the board or regulatory agency responsible for the licensing of the prescriber or dispenser; or

(2) A patient may have misused, abused, or diverted a controlled substance.

If the board determines that there is reason to believe that any of the acts described in this section may have occurred, the board may notify the appropriate law enforcement agency or the board or regulatory agency responsible for the licensing of the prescriber or dispenser. The advisory council established in section 15 of this Act shall recommend guidelines to the board for reviewing data and making determinations with respect to the referral of patients, prescribers, or dispensers to law enforcement or appropriate regulatory authorities.

Section 13. Any patient, dispenser, or prescriber may request that erroneous information

contained in the central repository be corrected or deleted. The board shall review the request to determine if the information is erroneous with respect to the patient, prescriber, or dispenser. The board shall correct any erroneous information the board discovers due to the request for review by a patient, prescriber, or dispenser.

Section 14. The board shall adopt a procedure to allow information contained in the central repository to be shared with officials in other states acting for the purpose of controlled substance monitoring and for requesting and receiving similar controlled substance monitoring information from other states.

Section 15. An advisory council is established to advise and make recommendations to the board regarding how to best use the program to improve patient care and foster the goal of reducing misuse, abuse, and diversion of controlled substances; to encourage cooperation and coordination among state, local, and federal agencies and other states to reduce the misuse, abuse, and diversion of controlled substances; and to provide advice and recommendations to the board regarding any other matters as requested by the board. The advisory council shall serve without compensation. The advisory council may have access to central repository information to fulfill its duties.

Section 16. The advisory council shall consist of:

(1) One dispenser selected by the board;

(2) One prescriber selected by the Board of Medical and Osteopathic Examiners;

(3) One prescriber selected by the Board of Nursing;

(4) One prescriber selected by the Board of Dentistry;

(5) One prescriber selected by the Board of Examiners in Optometry;

(6) One prescriber selected by the South Dakota Academy of Physician Assistants;

(7) One member elected by the South Dakota Association of Healthcare Organizations;

(8) A designee of the attorney general;

(9) A designee of the Department of Health; and

(10) Any other prescriber or dispenser determined by the board to be necessary to meet a mandate of, or avoid a delay in implementing, an appropriations measure. The number of additional members that the board may select is limited to the number necessary to meet the mandate or avoid the delay of an appropriation.

Section 17. The advisory council shall make recommendations to the board regarding:

(1) Safeguards for the release of information to persons who have access to the information contained in the central repository;

(2) The confidentiality of program information and the integrity of the patient's relationship with the patient's health care provider;

(3) Advancing the purposes of the program, including enhancement of the quality of health care delivery in this state; and

(4) The continued benefits of maintaining the program in relationship to the cost and other burdens to the state.

Section 18. Any dispenser who knowingly fails to submit prescription monitoring information to the board as required by this Act or knowingly submits incorrect prescription information may be reported by the board to the dispenser's licensing board.

Section 19. Any person authorized to have prescription monitoring information pursuant to this Act who knowingly discloses such information in violation of this Act is subject to a Class 6 felony.

Section 20. The board shall promulgate rules, pursuant to chapter 1-26, for the operation of the program. Any rule promulgated shall be designed to assure the fair, equitable, and efficient operation of the program. The rules may address the following:

(1) Criteria, procedures, and forms for submitting data to the program;

(2) Standards for information collection;

(3) Guidelines for reviewing data and making determinations with respect to the referral of patients, prescribers, or dispensers to law enforcement or appropriate regulatory authorities based upon an open case;

(4) Safeguards for the release of information to individuals who have access to the information contained in the central repository;

(5) Guidelines for maintaining the confidentiality of program information and the integrity of the patient's relationship with the patient's health care provider; and

(6) Policies for the compilation and release of statistics and outcomes for advancing the purposes of the program, including enhancement of the quality of health care delivery in this state.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The ballots received were voted by the voter whose name appears on the statement;

(2) The voter is registered in such precinct and has not previously voted in that precinct at the election; and

(3) The written application and statement were both signed by the voter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

registered voters who reside in the road district.

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

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

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

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

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

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

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

(1) Are based on the minimum professional performance standards established by the Board of Education pursuant to section 1 of this Act;

(2) Require multiple measures;

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

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

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

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

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

(3) Two superintendents;

(4) Two school board members;

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

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

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

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

Section 4. Nothing in this Act may diminish a school district's right to not renew a teacher's 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

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

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

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

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

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

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

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