

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

265L0021

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to repeal certain provisions regarding implied consent for
2 withdrawal of bodily substances and chemical tests when operating a vehicle.

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

4 Section 1. That § 32-23-10 be amended to read as follows:

5 32-23-10. Any person who operates any vehicle in this state is considered to have given
6 consent to the withdrawal of blood or other bodily substance and chemical analysis of the
7 person's blood, breath, or other bodily substance to determine the amount of alcohol in the
8 person's blood and to determine the presence of marijuana or any controlled drug or substance
9 or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15
10 or any other substance that may render a person incapable of safely driving. The chemical
11 analysis shall be administered at the direction of a law enforcement officer who, after stopping
12 or detaining the vehicle driver, has probable cause to believe that the driver was driving or in
13 physical control of the motor vehicle while in violation of § 32-23-1.

14 ~~The person shall be requested by the officer to submit to the withdrawal of blood or other~~
15 ~~bodily substance for chemical analysis or chemical analysis of the person's breath and shall be~~
16 ~~advised by the officer that:~~



1 ~~(1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~
2 ~~or chemical analysis may be required unless the person has been arrested for a third,~~
3 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~
4 ~~§ 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41~~
5 ~~or vehicular battery under § 22-16-42; or has been involved in an accident resulting~~
6 ~~in death or serious bodily injury of another person;~~

7 ~~(2) If the person refuses to submit to the withdrawal or chemical analysis, the person's~~
8 ~~driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the~~
9 ~~person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation~~
10 ~~order being issued; and~~

11 ~~(3) The person has the right to have a chemical analysis performed by a technician of the~~
12 ~~person's own choosing at the person's own expense, in addition to the test requested~~
13 ~~by the officer.~~

14 Section 2. That § 32-23-10.1 be repealed.

15 ~~32-23-10.1. If a person refuses to submit to chemical analysis of the person's blood, urine,~~
16 ~~breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for~~
17 ~~chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for~~
18 ~~violation of § 32-23-1 or § 32-23-21, such refusal may be admissible into evidence at the trial.~~

19 Section 3. That § 32-23-10.3 be repealed.

20 ~~32-23-10.3. For purposes of § 32-23-10, serious bodily injury is such injury as is grave and~~
21 ~~not trivial, and gives rise to apprehension of danger to life, health, or limb.~~

22 Section 4. That § 32-23-11 be repealed.

23 ~~32-23-11. Any person subject to license revocation for failure to submit to the withdrawal~~
24 ~~and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall~~

1 demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the
2 Secretary of Public Safety finds that the law enforcement officer complied with the law and the
3 refusal was made by the person, the secretary shall revoke that person's license to drive and any
4 nonresident operating privileges for one year. The secretary shall determine if the person is
5 eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter
6 1-26 for determining that eligibility.

7 — The Secretary of Public Safety may promulgate rules for restricted licenses as follows:

8 — (1) — Eligibility;

9 — (2) — Application;

10 — (3) — Determination;

11 — (4) — Limitations; and

12 — (5) — Grounds for revocation.

13 Section 5. That § 32-23-11.1 be repealed.

14 — 32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11
15 or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating § 32-
16 23-1 is dismissed by the state prior to the departmental hearing and the person is not convicted
17 of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a revocation
18 order being issued.

19 Section 6. That § 32-23-13 be repealed.

20 — 32-23-13. If any operator of a motor vehicle in this state who has been requested to submit
21 to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to
22 submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test
23 shall constitute consent and authority to administer a test notwithstanding the age of the operator
24 of the motor vehicle.

1 Section 7. That § 32-23-14 be amended to read as follows:

2 32-23-14. Only a physician, laboratory technician, registered nurse, physician's assistant,
3 phlebotomist, expanded role licensed practical nurse, medical technician, or medical
4 technologist may withdraw blood for the purpose of determining the alcoholic content therein.
5 This limitation does not apply to the taking of a breath or other bodily substance specimen. ~~Such~~
6 ~~Any such authorized persons, acting on the presumption of consent, and person or any hospital~~
7 ~~employing any such persons, are person, is~~ not liable and may not be held to pay damages to the
8 party from whom the blood sample is withdrawn, if the withdrawal is administered with usual
9 and ordinary care.

10 Section 8. That § 32-23-15 be amended to read as follows:

11 32-23-15. The person tested pursuant to ~~§§ 32-23-13 and 32-23-14~~ shall be permitted to
12 § 32-23-10 may have a physician, laboratory technician, registered nurse, physician's assistant,
13 or medical technologist of ~~his~~ the person's own choosing administer the chemical analysis in
14 addition to the one administered at the direction of the law enforcement officer.

15 Section 9. That § 32-23-16 be amended to read as follows:

16 32-23-16. Upon the request of the person who was tested pursuant to ~~§§ 32-23-13 and 32-~~
17 ~~23-14~~ § 32-23-10, or upon the request of ~~his~~ the person's attorney, the results of such analysis
18 shall be made available to ~~him~~ the person or to ~~his~~ the person's attorney.

19 Section 10. That § 32-23-18 be repealed.

20 ~~—32-23-18. The Department of Public Safety shall revoke the license of any person arrested~~
21 ~~for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed~~
22 ~~by a law enforcement officer pursuant to § 32-23-10.~~

23 Section 11. That § 32-23-19 be repealed.

24 ~~—32-23-19. A law enforcement officer shall serve the notice of intent to revoke, on behalf of~~

1 ~~the Department of Public Safety and shall take possession of any driver's license issued by this~~
2 ~~state held by the person if the arrested driver refuses to submit to a chemical analysis as directed~~
3 ~~by the officer pursuant to § 32-23-10. A copy of the completed notice of intent to revoke form,~~
4 ~~and any South Dakota driver's license taken into possession shall be forwarded to the~~
5 ~~department by the officer. If a valid South Dakota driver's license is surrendered, the notice of~~
6 ~~intent to revoke shall function as a temporary license which is valid for one hundred twenty~~
7 ~~days. Upon receipt of a petition for a hearing, the department may extend the temporary license~~
8 ~~thirty days following the scheduled date of the hearing.~~

9 Section 12. That § 32-23-20 be repealed.

10 ~~—32-23-20. The department shall revoke the person's license to drive and any nonresident~~
11 ~~operating privileges pursuant to § 32-23-11.~~

12 Section 13. That § 19-13-28.1 be repealed.

13 ~~—19-13-28.1. Notwithstanding the provisions of § 19-13-28, when a person stands trial for~~
14 ~~driving while under the influence of alcohol or drugs, as provided under § 32-23-1, and that~~
15 ~~person has refused chemical analysis, as provided in § 32-23-10, such refusal is admissible into~~
16 ~~evidence. Such person may not claim privilege against self-incrimination with regard to~~
17 ~~admission of refusal to submit to chemical analysis.~~

18 Section 14. That § 32-12A-46 be amended to read as follows:

19 32-12A-46. Any person who operates any commercial motor vehicle in this state is
20 considered to have given consent to the withdrawal of blood or other bodily substance to
21 determine the amount of alcohol in that person's blood, or to determine the presence of any
22 controlled drug or substance or marijuana or any substance ingested, inhaled, or otherwise taken
23 into the body as prohibited by § 22-42-15 or any other substance that may render a person
24 incapable of safely driving. The chemical analysis shall be administered at the direction of a law

1 enforcement officer who after stopping or detaining the commercial motor vehicle driver has
2 probable cause to believe that the driver was driving or in actual physical control of a
3 commercial motor vehicle while having any alcohol or drugs in that person's system. ~~Any person~~
4 ~~requested by a law enforcement officer under this section to submit to a chemical analysis shall~~
5 ~~be advised by the officer that:~~

6 ~~(1) If the person refuses to submit to the chemical analysis, none shall be given, and~~

7 ~~(2) If the person refuses to submit to the chemical analysis the person shall be~~
8 ~~immediately placed out of service for a period of twenty-four hours and be~~
9 ~~disqualified from operating a commercial motor vehicle for a period of not less than~~
10 ~~one year, or~~

11 ~~(3) If the person submits to a chemical analysis which discloses that the person was~~
12 ~~operating the commercial motor vehicle while there was 0.04 percent or more by~~
13 ~~weight of alcohol in that person's blood the person shall be disqualified from~~
14 ~~operating a commercial motor vehicle for not less than one year.~~

15 Section 15. That § 32-12A-36 be amended to read as follows:

16 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period
17 of not less than one year:

18 (1) If convicted of a first violation of driving or being in actual physical control of a
19 commercial motor vehicle while under the influence of alcohol, ~~or marijuana,~~ any
20 controlled drug or substance, or any other substance that may render a person
21 incapable of safely driving, in violation of § 32-23-1;

22 (2) If convicted of a first violation of driving or being in actual physical control of a
23 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol
24 in that person's blood as shown by chemical analysis of that person's breath, blood,

1 or other bodily substance, in violation of § 32-12A-44;

2 (3) If convicted of a first violation of leaving the scene of an accident while operating a
3 commercial motor vehicle, in violation of § 32-34-5 or 32-34-6; or

4 (4) If convicted of a first violation of using a commercial motor vehicle in the
5 commission of any felony other than a felony described in § 32-12A-38; ~~or~~

6 ~~(5) For refusing to submit to a chemical analysis for purposes of determining the amount~~
7 ~~of alcohol in that person's blood while driving a commercial motor vehicle in~~
8 ~~violation of § 32-23-11, 32-12A-43, or 32-12A-46.~~

9 If any of these violations or refusal occurred while transporting hazardous material required
10 to be placarded, the person is disqualified for a period of not less than three years.

11 Section 16. That § 32-12A-43 be amended to read as follows:

12 32-12A-43. Notwithstanding any other provision of §§ 32-12A-1 to ~~32-12A-50, inclusive,~~
13 ~~32-12A-51, and 32-12A-52 to~~ 32-12A-58, inclusive, no person may drive, operate, or be in
14 actual physical control of a commercial motor vehicle within this state while having any
15 measurable or detectable amount of alcohol in that person's system. A person who drives,
16 operates, or is in actual physical control of a commercial motor vehicle within this state while
17 having any measurable or detectable amount of alcohol in that person's system ~~or who refuses~~
18 ~~to submit to an alcohol test under § 32-12A-46,~~ shall be placed out of service for twenty-four
19 hours.