

State of South Dakota

EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

409L0023

HOUSE BILL NO. _____

Introduced by: _____

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding age requirements for
2 the consumption of alcoholic beverages.

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

4 Section 1. That § 35-10-17 be amended to read as follows:

5 35-10-17. Any structure, conveyance, or place where alcoholic beverages are manufactured,
6 sold, kept, bartered, given away, found, consumed, or used in violation of the laws of the state,
7 relating to alcoholic beverages, and ~~all~~ any alcoholic beverages beverage and any property kept
8 and used in maintaining the same, is hereby declared to be a common nuisance, and any person
9 who knowingly maintains such a common nuisance is guilty of a Class 1 misdemeanor. A single
10 instance of manufacturing, selling, keeping, bartering, giving away, finding, consuming, or
11 using alcoholic beverages in violation of the laws of this section is a Class 2 misdemeanor.

12 Section 2. That § 35-9-1.3 be repealed.

13 ~~35-9-1.3. No person may be convicted of illegally selling any alcoholic beverage to any~~
14 ~~underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of,~~
15 ~~and the seller relied upon, any false age-bearing identification document that was furnished to~~
16 ~~the underage person by any state agency or local law enforcement agency or any agent,~~



1 ~~employee, contractor, or associate of any state agency or local law enforcement agency for the~~
2 ~~purpose of attempting to illegally purchase any alcoholic beverage.~~

3 Section 3. That § 35-9-2 be amended to read as follows:

4 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to
5 purchase, attempt to purchase, ~~or possess,~~ or consume alcoholic beverages except when
6 consumed in a religious ceremony and given to ~~said~~ that person by an authorized person, ~~or. It~~
7 is a Class 2 misdemeanor for any person under the age of twenty-one to misrepresent his the
8 person's age with the use of any document for the purpose of purchasing or attempting to
9 purchase alcoholic beverages from any licensee licensed under this title.

10 Section 4. That § 35-9-2.3 be repealed.

11 ~~35-9-2.3. Except as provided in §§ 35-9-1 and 35-9-1.1, it is a Class 1 misdemeanor for any~~
12 ~~person twenty-one years of age or older to purchase or otherwise acquire alcoholic beverages~~
13 ~~from a retail establishment and to give or resell the alcoholic beverages to any person under the~~
14 ~~age of twenty-one years.~~

15 Section 5. That § 35-9-4.1 be repealed.

16 ~~35-9-4.1. The South Dakota Legislature enacts chapter 261 of the 1987 Session Laws to~~
17 ~~raise the state's minimum drinking age to twenty-one years of age solely under the duress of a~~
18 ~~funding sanction imposed by the United States Department of Transportation under 23 U.S.C~~
19 ~~§ 158. The Legislature strongly objects to being forced to choose between loss of highway~~
20 ~~construction funds, which are badly needed to construct priority road projects to promote the~~
21 ~~public health and safety of the state's inhabitants and visitors, and loss of its right to set its own~~
22 ~~drinking age. The action taken by this Legislature shall not be construed as a concession or~~
23 ~~waiver of its constitutional right to establish at what age an individual may lawfully purchase,~~
24 ~~possess, and consume alcoholic beverages. Rather, it is taken to ensure that South Dakota is not~~

1 ~~penalized while it challenges in the United States Supreme Court the federal government's~~
2 ~~attempt to usurp the state's right to regulate the drinking age of its citizens. This legislation is~~
3 ~~enacted with the expressed intent of providing the South Dakota attorney general the maximum~~
4 ~~flexibility to pursue South Dakota's challenge to the federal government's intrusion into a right~~
5 ~~reserved to the state while ensuring the full availability of federal highway funds for the 1988~~
6 ~~construction season. It is the intent of this Legislature that if at any time before or after the~~
7 ~~effective date of this legislation the provisions of 23 U.S.C § 158 are repealed, expired or~~
8 ~~declared invalid by the United States Supreme Court, the provisions of this legislation shall~~
9 ~~become null and void and any provision repealed by SL 1987, ch 261 shall be revived pursuant~~
10 ~~to § 2-14-19.~~

11 Section 6. That § 35-9-7 be amended to read as follows:

12 35-9-7. ~~If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a first~~
13 ~~offense, the court shall, in addition to any other penalty allowed by law, order the suspension~~
14 ~~of the person's driving privileges for a period not less than thirty days and not to exceed one~~
15 ~~year. However, the court may issue an order permitting the person to operate a motor vehicle~~
16 ~~for purposes of the person's employment or attendance at school or to court-ordered counseling~~
17 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~
18 ~~may also restrict the privilege in some other manner as the court may see fit for a period not to~~
19 ~~exceed one year.~~

20 If the conviction or adjudication for a violation of § ~~35-9-1.1 or 35-9-2~~ is for a second or
21 subsequent offense, the court shall, in addition to any other penalty allowed by law, order the
22 suspension of the person's driving privileges for a period ~~not less than sixty days~~ and not to
23 exceed ~~one year~~ thirty days. However, the court may issue an order permitting the person to
24 operate a motor vehicle for purposes of the person's employment or attendance at school or to

1 ~~court-ordered attendance at counseling programs during the hours of the day and the days of the~~
2 ~~week set forth in the order. The court may also restrict the privilege in some other manner as the~~
3 ~~court may see fit for a period not to exceed one year.~~

4 Section 7. That § 35-9-8 be repealed.

5 ~~— 35-9-8. If the conviction or adjudication for a violation of § 35-9-1 is for a first offense, the~~
6 ~~court shall, in addition to any other penalty allowed by law, order the revocation of the~~
7 ~~defendant's driving privileges for a period not less than thirty days and not to exceed one year.~~

8 ~~However, the court may issue an order permitting the person to operate a motor vehicle for~~
9 ~~purposes of the person's employment or attendance at school or to court-ordered counseling~~
10 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~
11 ~~may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.~~

12 ~~— If the conviction or adjudication for a violation of § 35-9-1 is for a second or subsequent~~
13 ~~offense, the court shall, in addition to any other penalty allowed by law, order the revocation of~~
14 ~~the defendant's driving privileges for a period not less than sixty days and not to exceed one~~
15 ~~year.~~