

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

916L0035

SENATE BILL NO. \_\_\_\_\_

Introduced by: \_\_\_\_\_

1 FOR AN ACT ENTITLED, An Act to BROOKINGS-----Theft.

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

3 Section 1. That § 22-30A-1 be amended to read as follows:

4 22-30A-1. Any person who takes, or exercises unauthorized control over, property of  
5 another, with intent to deprive him that person of it the property, is guilty of theft.

6 Section 2. That § 22-30A-2 be amended to read as follows:

7 22-30A-2. Any person who transfers property of another, or any interest ~~therein~~ in the  
8 property of another, with intent to benefit himself the transferor or another who is not entitled  
9 thereto, is guilty of theft.

10 Section 3. That § 22-30A-2.1 be repealed.

11 ~~22-30A-2.1. If any person transfers property purchased at a public auction beyond the~~  
12 ~~borders of this state without first either making full payment for the property or obtaining the~~  
13 ~~written consent of the auctioneer to transfer the property out of state, a rebuttable presumption~~  
14 ~~arises that the transfer was made with intent to defraud within the meaning of §§ 22-30A-1 and~~  
15 ~~22-30A-10 and that the person who is the purchaser and transferrer has committed theft.~~

16 Section 4. That § 22-30A-3 be amended to read as follows:



1       22-30A-3. Any person who obtains property of another by deception is guilty of theft. A  
2 person deceives if, with intent to defraud ~~he~~, that person:

3           (1) Creates or reinforces a false impression, including false impressions as to law,  
4 value, intention, or other state of mind; ~~but deception.~~ However, as to a person's  
5 intention to perform a promise ~~shall~~, deception may not be inferred from the fact  
6 alone that ~~he~~ that person did not subsequently perform the promise;

7           (2) Prevents another from acquiring information which would affect ~~his~~ the other  
8 person's judgment of a transaction;

9           (3) Fails to correct a false impression which the deceiver previously created or  
10 reinforced, or which the deceiver knows to be influencing another to whom ~~he~~ the  
11 deceiver stands in a fiduciary or confidential relationship; or

12           (4) Fails to disclose a known lien, adverse claim, or other legal impediment to the  
13 enjoyment of property which ~~he~~ the deceiver transfers or encumbers in  
14 consideration for property ~~he~~ that the deceiver thus obtains, whether such  
15 impediment is or is not valid, or is or is not a matter of official record.

16       The term, "deceive", does not, however, include falsity as to matters having no pecuniary  
17 significance; or puffing by statements unlikely to deceive reasonable persons.

18       Section 5. That § 22-30A-4 be amended to read as follows:

19       22-30A-4. A person is guilty of theft if ~~he~~ the person obtains property of another by  
20 threatening to:

21           (1) Inflict bodily injury on anyone or commit any criminal offense;

22           (2) Accuse anyone of a criminal offense;

23           (3) Expose any secret tending to subject any person to hatred, contempt, or ridicule,  
24 or to impair any person's credit or business repute;

1 (4) Take or withhold action as an official, or cause an official to take or withhold  
2 action;

3 (5) Bring about or continue a strike, boycott, or other collective unofficial action, if  
4 the property is not demanded or received for the benefit of the group in whose  
5 interest the actor purports to act;

6 (6) Testify or provide information or withhold testimony or information with respect  
7 to another's legal claim or defense; or

8 (7) Inflict any other harm which would not benefit the person making the threat.

9 Section 6. That § 22-30A-6 be amended to read as follows:

10 22-30A-6. Any person who comes into control of property of another that ~~he~~ the person  
11 knows to have been lost, estrayed, mislaid, or delivered under a mistake as to the nature or  
12 amount of the property or the identity of the recipient, is guilty of theft if, with intent to deprive  
13 the owner thereof, ~~he~~ the person fails to take reasonable measures to restore the property to a  
14 person entitled to have it the property.

15 Section 7. That § 22-30A-7 be amended to read as follows:

16 22-30A-7. Any person who receives, retains, or disposes of property of another knowing that  
17 ~~it~~ the property has been stolen, or believing that ~~it~~ the property has probably been stolen, unless  
18 the property is received, retained, or disposed of with the intent to restore ~~it~~ the property to the  
19 owner, is guilty of theft.

20 Section 8. That § 22-30A-8 be amended to read as follows:

21 22-30A-8. Any person is guilty of theft if ~~he~~ that person intentionally obtains property or  
22 service which ~~he~~ that person knows is available only for compensation, by deception, threat, or  
23 other means to avoid payment for the service or property.

24 Section 9. That § 22-30A-8.1 be amended to read as follows:

1       22-30A-8.1. Any person who, by use of a credit card issued to another person, without the  
2 consent of the person to whom issued, or by use of a credit card which has been revoked or  
3 canceled or has expired, or by use of a falsified, mutilated, altered, or counterfeit credit card  
4 obtains property or services on credit, is guilty of theft.

5       Section 10. That § 22-30A-9 be amended to read as follows:

6       22-30A-9. Any person who, having control over the disposition of services of others, to  
7 which ~~he~~ that person is not entitled, diverts such services to his or her own benefit or to the  
8 benefit of another not entitled thereto, is guilty of theft.

9       Section 11. That § 22-30A-10 be amended to read as follows:

10       22-30A-10. Any person, who has been entrusted with the property of another; and who, with  
11 intent to defraud, appropriates such property to a use or purpose not in the due and lawful  
12 execution of his or her trust, is guilty of theft. A distinct act of taking is not necessary to  
13 constitute theft ~~under~~ pursuant to this section.

14       Section 12. That § 22-30A-10.1 be amended to read as follows:

15       22-30A-10.1. If a any person, who has been accused of theft, restores or returns the property  
16 allegedly ~~appropriated~~ stolen before an indictment or information is laid before a magistrate,  
17 such fact may be considered in mitigation of punishment. The restoration or return of the  
18 property is not a defense nor may it be considered by the finder of fact.

19       Section 13. That § 22-30A-11 be amended to read as follows:

20       22-30A-11. Any person convicted of theft under § 22-30A-10 for unlawfully obtaining  
21 property of this state, of any of its political subdivisions, or of any agency or fund in which the  
22 state or its people are interested shall, in addition to the punishment prescribed by § 22-30A-17  
23 and chapter 22-6, be disqualified from holding any public office, elective or appointive, under  
24 the laws of this state, so long as ~~he~~ that person remains a defaulter to this state or any of its

1 political subdivisions, agencies, or funds.

2 Section 14. That § 22-30A-12 be amended to read as follows:

3 22-30A-12. Any person who, without the intent to deprive the owner thereof, operates  
4 another's motor vehicle or vessel without the consent of the owner, is guilty of a Class 1  
5 misdemeanor.

6 Section 15. That § 22-30A-13 be amended to read as follows:

7 22-30A-13. Any person who intentionally converts to his or her own use any leased or  
8 rented personal property, after receiving proper notice demanding the return of the property  
9 following expiration of the lease or rental agreement, is guilty of theft. ~~Proper~~ For the purposes  
10 of this section, the term, proper notice, means a written demand for the return of the property  
11 addressed and mailed by certified or registered mail to the lessee or renter or personal service  
12 of such written demand in the manner provided for service of a summons.

13 Section 16. That § 22-30A-14 be amended to read as follows:

14 22-30A-14. The following factors, taken as a whole ~~shall be,~~ constitute an affirmative  
15 defense to a prosecution commenced under § 22-30A-13:

- 16 (1) That the lessee accurately stated his or her name and address at the time of rental;
- 17 (2) That the lessee's failure to return the item at the expiration date of the rental  
18 contract was lawful;
- 19 (3) That the lessee failed to receive the lessor's notice personally; and
- 20 (4) That the lessee returned the personal property to the owner or lessor within  
21 forty-eight hours of receiving notice of the commencement of prosecution,  
22 together with any charges for the overdue period and the value of damages to the  
23 personal property, if any.

24 Section 17. That § 22-30A-15 be amended to read as follows:

1        22-30A-15. Conduct ~~denominated~~ constituting theft in pursuant to this chapter constitutes  
2 a single offense including, ~~but not limited to, the~~ any separate offenses committed or charged  
3 before the effective date of this chapter and known as larceny, embezzlement, extortion,  
4 fraudulent conversion, false pretense, and receiving stolen property. An accusation of theft may  
5 be supported by evidence that ~~it~~ the theft was committed in any manner that would be theft  
6 under this chapter, notwithstanding the specification of a different manner in the indictment or  
7 information, subject only to the power of a court to ensure a fair trial by granting a continuance  
8 or other appropriate relief ~~where~~ if the conduct of the defense would be prejudiced by lack of  
9 fair notice or by surprise.

10        Section 18. That § 22-30A-16 be amended to read as follows:

11        22-30A-16. It is an affirmative defense to a prosecution for theft that the ~~actor~~ defendant:

- 12            (1) Was unaware that the property taken was that of another; or  
13            (2) Acted under an honest and reasonable claim of right to the property involved or  
14            that ~~he~~ the defendant had a right to acquire or dispose of it the property as he or  
15            she did.

16        Section 19. That § 22-30A-17 be amended to read as follows:

17        22-30A-17. Theft is grand theft, if the property stolen:

- 18            (1) ~~The value of the property stolen exceeds five hundred~~ Exceeds one thousand  
19            dollars in value;  
20            (2) ~~Repealed by SL 1990, ch 165, § 2.~~ Is a firearm;  
21            (3) ~~Property of any value is~~ Is taken from the person of another; or  
22            (4) ~~In the case of theft by receiving stolen property, the receiver is a dealer in stolen~~  
23            ~~property, the value of the property stolen exceeds five hundred dollars in value;~~  
24            or

1 ~~——(5)——~~The property stolen is cattle, horses, mules, buffalo, or captive nondomestic elk.  
2 ~~——~~Theft in all other cases is petty theft. Grand theft is a Class 4 felony. Petty theft is divided  
3 into two degrees. Petty theft of one hundred dollars or more is in the first degree and is a Class  
4 1 misdemeanor. Petty theft is in the first degree and is a Class 1 misdemeanor if the theft is of  
5 money or property of any value less than five hundred dollars belonging to a resident or patient  
6 of a hospital, nursing facility, chemical dependency facility, assisted living center, development  
7 center, human services center, or any residential facility for the mentally ill, mentally retarded,  
8 or developmentally disabled and if the theft is committed by an employee of the facility.  
9 Otherwise petty theft of less than one hundred dollars is in the second degree and is a Class 2  
10 misdemeanor.

11 Grand theft is a Class 4 felony.

12 Section 20. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 Theft is aggravated grand theft, if the value of the property stolen exceeds one hundred  
15 thousand dollars. Aggravated grand theft is a Class 3 felony.

16 Section 21. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 Theft is petty theft in the first degree, if the value of the property stolen exceeds four  
19 hundred dollars but does not exceed one thousand dollars. Petty theft in the first degree is a  
20 Class 1 misdemeanor.

21 Section 22. That chapter 22-30A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Theft is petty theft in the second degree, if the value of the property stolen is four hundred  
24 dollars or less. Petty theft in the second degree is a Class 2 misdemeanor.

1 Section 23. That § 22-30A-18 be amended to read as follows:

2 22-30A-18. Amounts involved in thefts, whether from the same person or several persons,  
3 committed pursuant to one scheme or course of conduct, ~~whether from the same person or~~  
4 ~~several persons,~~ may be aggregated in determining the degree of the offense.

5 Section 24. That § 22-30A-19.1 be amended to read as follows:

6 22-30A-19.1. Any adult, or any emancipated minor as defined in § 25-5-24, or ~~the parents~~  
7 any parent or guardian of any unemancipated minor, who takes possession of any goods, wares,  
8 or merchandise displayed or offered for sale by ~~the~~ a store or other mercantile establishment  
9 without the consent of the owner or seller, and with the intention of converting the goods to the  
10 person's own use without having paid the purchase price, is liable to the owner or seller for the  
11 retail value of the merchandise, regardless of whether or not the merchandise has been recovered  
12 in undamaged condition by the ~~merchant~~ owner or seller. In addition, the ~~merchant~~ owner or  
13 seller is entitled to a penalty of four times the retail value of the merchandise, or one hundred  
14 dollars, whichever is greater.

15 Section 25. That § 22-30A-19.2 be amended to read as follows:

16 22-30A-19.2. Any ~~merchant~~ owner or seller of merchandise, who has reasonable grounds  
17 to believe that a person has committed retail theft pursuant to § 22-30A-19.1, may detain such  
18 person, on or off the premises of a retail mercantile establishment, in a reasonable manner and  
19 for a reasonable length of time:

20 (1) To request identification;

21 (2) To verify such identification;

22 (3) To make reasonable inquiry as to whether such person has in his or her possession  
23 unpurchased merchandise and, to make reasonable investigation of the ownership  
24 of such merchandise;

1 (4) To inform a ~~peace~~ law enforcement officer of the detention of the person and  
2 surrender that person to the custody of a ~~peace~~ law enforcement officer; and

3 (5) In the case of a minor, to inform a ~~peace~~ law enforcement officer, ~~the parents a~~  
4 parent, guardian, or other private person interested in the welfare of ~~that~~ the  
5 detained minor ~~of this detention~~ and to surrender custody of ~~such~~ the minor to  
6 such person.

7 ~~A merchant~~ An owner or seller of merchandise may make a detention as permitted in this  
8 section off the premises of a retail mercantile establishment only if such detention is pursuant  
9 to ~~an~~ the immediate pursuit of such person.

10 Section 26. That § 22-30A-19.3 be amended to read as follows:

11 22-30A-19.3. Any ~~person~~ owner or seller of merchandise who is the victim of retail theft  
12 pursuant to § 22-30A-19.1 may make a written demand for the amount for which ~~the person~~  
13 ~~who committed the act~~ any person is liable ~~under~~ pursuant to § 22-30A-19.1. Except for a sole  
14 proprietorship, a member of management, other than the initial detaining person, shall evaluate  
15 the validity of the accusation that ~~the person committed the~~ an act of retail theft was committed  
16 and shall approve the accusation before a written demand for payment is issued. The demand  
17 for payment shall be mailed by certified mail to the person from whom payment is demanded  
18 or served personally on the person from whom payment is demanded. Personal service shall be  
19 accomplished in the same manner as the service of a summons.

20 Section 27. That § 22-30A-19.4 be amended to read as follows:

21 22-30A-19.4. If the person to whom a written demand is made ~~under~~ pursuant to § 22-30A-  
22 19.3 complies by making full payment of the amount required by the written demand within  
23 thirty days after its receipt, that person incurs no further civil liability to the ~~merchant~~ owner or  
24 seller of the merchandise. However, if the person to whom a written demand is made fails to

1 make full payment pursuant to that written demand, then the penalty allowed in § 22-30A-19.1  
2 may be doubled.

3 Section 28. That § 22-30A-20 be amended to read as follows:

4 22-30A-20. ~~A~~ Any person who receives, retains, or disposes of United States Department  
5 of Agriculture commodities which have been transferred to the State of South Dakota, who is  
6 not entitled to possess those commodities, either as an eligible recipient of commodities  
7 pursuant to 7 CFR 250.3 as effective on January 1, 1981, or as a purchaser of commodities  
8 which have been released for sale due to condition or damage and have been plainly marked as  
9 available for sale to the public, is guilty of theft.

10 Section 29. That § 22-30A-21 be amended to read as follows:

11 22-30A-21. No state, county, or municipal law enforcement officer may retain or dispose  
12 of property that has been seized or confiscated unless ~~he~~ the law enforcement officer retains or  
13 disposes of such property pursuant to law or a court order. A violation of this section constitutes  
14 theft pursuant to § 22-30A-1.

15 Section 30. That § 22-30A-22 be repealed.

16 ~~— 22-30A-22. Any employee of the Department of Corrections or Department of Human  
17 Services who, for personal benefit, takes, borrows, or steals anything with a value of five dollars  
18 or more in property or money, from a patient, juvenile, or inmate who is under the care or  
19 supervision of the Department of Corrections or the Department of Human Services, is guilty  
20 of a Class 1 misdemeanor theft.~~

21 ~~— For purposes of this section, an employee of the Department of Corrections or the  
22 Department of Human Services means any person employed by the department, full or part time,  
23 including an individual under contract assigned to the department, an employee of another state  
24 agency assigned to the department, or a volunteer working in a department facility or for a~~

1 ~~department agency or program.~~

2 Section 31. That § 22-30A-23 be repealed.

3 ~~—22-30A-23. Any person who takes or obtains physical control of any aircraft registered~~

4 ~~pursuant to the provisions of chapter 50-11 with the intent to deprive another of the aircraft or~~

5 ~~without the permission of the owner or the owner's agent is guilty of theft of an aircraft.~~

6 ~~—A violation of this section is a Class 3 felony.~~