

# State of South Dakota

## EIGHTIETH LEGISLATIVE ASSEMBLY, 2005

596L0117

HOUSE BILL NO. \_\_\_\_\_

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

1 FOR AN ACT ENTITLED, An Act to TAB 6.

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

3 Section 1. That § 1-1-11 be repealed.

4 ~~1-1-11. No armed body of police or detectives, or armed body of persons other than United~~  
5 ~~States troops, shall be brought into this state for the suppression of violence, except upon the~~  
6 ~~application of the Legislature if in session, or the Governor, if the Legislature is not in session.~~

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

8 Section 2. That § 2-4-6 be amended to read as follows:

9 2-4-6. Every person who intentionally ~~and~~, by force or fraud, prevents the Legislature of this  
10 state or either of the branches composing it, or any of the members thereof, from meeting or  
11 organizing, is guilty of a Class 4 felony.

12 Section 3. That § 2-4-8 be amended to read as follows:

13 2-4-8. Every person who intentionally ~~and~~, by force or fraud, compels or attempts to compel  
14 the Legislature of this state, or either of the branches composing it, to adjourn or disperse, is  
15 guilty of a Class 4 felony.

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



1        2-4-10. Every person who intentionally, by force or fraud, compels or attempts to compel  
2 either branch of the Legislature of this state to pass, amend, or reject any bill or resolution, or  
3 to grant or refuse any petition, or to perform or omit to perform any other official act, is guilty  
4 of a Class 4 felony.

5        Section 5. That § 2-7-21 be amended to read as follows:

6        2-7-21. Any person who fraudulently alters a bill which has been passed by the Legislature  
7 of this state, with intent to have it approved by the Governor, certified by the secretary of state,  
8 or printed or published by the printer of the statutes, in language different from that in which  
9 it was passed by the Legislature, is guilty of a Class 6 felony.

10       Section 6. That § 23A-28B-35 be amended to read as follows:

11       23A-28B-35. No person may submit a fraudulent application or claim for a victims'  
12 compensation award, may intentionally make or cause to be made any false statement or  
13 representation of a material fact in a claim, or may intentionally conceal or fail to disclose  
14 information affecting the amount of or the initial or continued right to any such claim or award  
15 when reasonably requested to provide such information by the department or the commission.

16       Any person who violates the provisions of this section is guilty of a Class 1 misdemeanor  
17 if the application or claim is in an amount of ~~five hundred~~ one thousand dollars or less. Any  
18 person who violates the provisions of this section is guilty of a Class 4 felony if the application  
19 or claim is in an amount exceeding ~~five hundred~~ one thousand dollars.

20       Any person who violates the provisions of this section forfeits any benefit received under  
21 this chapter and shall reimburse the state for any such payments received or paid to or on behalf  
22 of that person.

23       The state has a civil cause of action for relief against any person who violates this section  
24 in the amount of damages which the state has sustained as a result of such violation and, in

1 addition, for punitive damages in an amount not more than double the amount of damages  
2 which the state has sustained, together with interest, plus the cost of such suit.

3 Section 7. That § 24-11-48 be amended to read as follows:

4 24-11-48. No employee or other person may deliver or procure to be delivered, or have in  
5 such person's possession with intent to deliver, to any person incarcerated in a jail or a juvenile  
6 detention facility, or deposit or conceal in or around any jail or in or around a juvenile detention  
7 facility, or in any mode of transport entering the grounds of any jail or juvenile detention facility  
8 and its ancillary facilities used to house inmates or juveniles, any article or thing ~~contrary~~  
9 prohibited pursuant to § 24-11-47 with intent that any inmate obtain or receive the same. A  
10 violation of this section is a Class 6 felony.

11 Section 8. The code counsel shall transfer § 25-5A-7.1 to a newly created chapter in Title  
12 22 entitled "Offenses Against the Family" and shall renumber the section accordingly and adjust  
13 all appropriate cross references.

14 Section 9. That § 25-7-15 be amended to read as follows:

15 25-7-15. The parent of any child under the age of ~~six~~ ten years and any person to whom any  
16 such child has been confided for nurture or education who deserts such child in any place  
17 ~~whatever~~ with intent to wholly ~~to~~ abandon it the child, is guilty of a ~~Class 6~~ Class 4 felony.

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

19 25-10-13. If a temporary protection order or a protection order is granted pursuant to this  
20 chapter or is a foreign domestic violence protection order pursuant to § 25-10-12.1, and the  
21 respondent or person to be restrained knows of the order, violation of the order is a Class 1  
22 misdemeanor. If any violation of this section constitutes an assault pursuant to ~~§ 22-18-1.1~~ § 22-  
23 18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been  
24 convicted of, or entered a plea of guilty to, two or more violations of this section, the factual

1 basis for which occurred after the date of the second conviction, and occurred within five years  
2 of committing the current offense, the respondent or person to be restrained is guilty of a Class  
3 6 felony for any third or subsequent offense. Any proceeding under this chapter is in addition  
4 to other civil or criminal remedies.

5 Section 11. That § 31-28-23 be amended to read as follows:

6 31-28-23. No person may, without lawful authority, attempt or actually alter, deface, injure,  
7 knock down, remove, or in any manner molest or interfere with any official highway marker,  
8 sign, guide board, traffic-control device, snowgate, or any railroad sign or signal, barrier,  
9 warning device, or sign erected in connection with highway maintenance or construction  
10 activities. A violation of this section is a Class 1 misdemeanor. Any person who violates this  
11 section is responsible for the cost of repairing or replacing such markers, signs, signals, barriers,  
12 or devices.

13 Section 12. That § 32-33-18 be amended to read as follows:

14 32-33-18. Any driver of a motor vehicle who intentionally fails or refuses to bring a vehicle  
15 to a stop, ~~or who otherwise flees or attempts to elude a pursuing law enforcement vehicle;~~ when  
16 given visual or audible signal to bring the vehicle to a stop, is guilty of ~~eluding~~ failure to stop  
17 at the signal of a law enforcement officer. The signal given by the law enforcement officer may  
18 be by hand, voice, emergency light, or siren. The officer giving the signal shall be in uniform,  
19 prominently displaying a badge of office, and the vehicle shall be appropriately marked showing  
20 it to be an official law enforcement vehicle.

21 ~~Eluding~~ Failure to stop at the signal of a law enforcement officer is a ~~Class 1~~ Class 2  
22 misdemeanor. In addition, the court ~~shall~~ may order that the defendant's driver's license be  
23 revoked for up to one year, but may issue an order, upon proof of financial responsibility  
24 pursuant to § 32-35-43.1, allowing the defendant to operate a motor vehicle for purposes of the

1 defendant's employment, attendance at school, or counseling programs. ~~Any person who is~~  
2 ~~found guilty of eluding is subject to the additional enhanced penalties if the course of eluding~~  
3 ~~results in:~~

4 ~~— (1) — Death or great bodily injury to another person, a Class 4 felony; and~~

5 ~~— (2) — Substantial bodily injury to another person or property damage in excess of five~~  
6 ~~hundred dollars to property belonging to a person other than the person eluding, a~~  
7 ~~Class 6 felony.~~

8 ~~— For any subsequent violation, the court shall order that the defendant's driver's license be~~  
9 ~~revoked for five years.~~

10 Section 13. That chapter 32-33 be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 Any driver of a motor vehicle who, after failing or refusing to bring a vehicle to a stop  
13 pursuant to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit  
14 of the law enforcement officer is guilty of eluding. Eluding is a Class 1 misdemeanor. In  
15 addition, the court may order that the defendant's driver's license be revoked for up to one year,  
16 but may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, allowing  
17 the defendant to operate a motor vehicle for purposes of the defendant's employment, attendance  
18 at school, or counseling programs.

19 Section 14. That chapter 32-33 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 Any driver of a motor vehicle who flees from a law enforcement officer or attempts to elude  
22 the pursuit of a law enforcement officer is guilty of aggravated eluding if, at any time during the  
23 flight or pursuit, the driver operates the motor vehicle in a manner that constitutes an inherent  
24 risk of death or serious bodily injury to any third person. Any of the following constitutes an

1 inherent risk of death or serious bodily injury to a third person, while fleeing from a law  
2 enforcement officer or attempting to elude the pursuit of a law enforcement officer:

- 3 (1) Death or serious bodily injury to any person; or
- 4 (2) Property damage in the aggregate of two thousand or more dollars; or
- 5 (3) Exceeding, at any time during the flight or pursuit, any posted speed limit by twenty  
6 or more miles per hour; or
- 7 (4) Exceeding, at any time during the flight or pursuit, any posted speed limit through a  
8 school zone or a construction zone by ten or more miles per hour; or
- 9 (5) Failure to surrender to authority within ten minutes of the initiation of the flight or  
10 attempted elusion; or
- 11 (6) Failure to surrender to authority prior to traveling five miles in the course of the flight  
12 or attempted elusion.

13 Aggravated eluding is a Class 5 felony. In addition, the court may order that the defendant's  
14 driver's license be revoked for up to one year, but may issue an order, upon proof of financial  
15 responsibility pursuant to § 32-35-43.1, allowing the defendant to operate a motor vehicle for  
16 purposes of the defendant's employment, attendance at school, or counseling programs. For any  
17 subsequent aggravated eluding violation, the court shall order that the defendant's driver's  
18 license be revoked for five years.

19 Section 15. That § 33-12-23 be amended to read as follows:

20 33-12-23. ~~Every~~ Any person who enters any fort, magazine, arsenal, armory, arsenal yard,  
21 or encampment, and seizes or takes away any arms, ammunition, military stores, or supplies  
22 belonging to the people of this state, and every person who enters any such place with intent to  
23 do so, is guilty of a ~~Class 4~~ Class 2 felony.

24 Section 16. That § 34-16-2 be amended to read as follows:

1       34-16-2. ~~Every~~ Any person who releases or spreads any disease germs intending thereby to  
2 accomplish the infection of one or more persons or domestic animals is guilty of a ~~Class 4~~ Class  
3 2 felony.

4       Section 17. That § 37-17-1 be amended to read as follows:

5       37-17-1. Any person who knowingly sells or offers for sale any agricultural implement, farm  
6 tractor, or other type of farm machinery or equipment, or radio, piano, phonograph, sewing  
7 machine, washing machine, typewriter, adding machine, comptometer, bicycle, firearm, safe,  
8 vacuum cleaner, dictating machine, tape recorder, watch, watch movement, watch case, or any  
9 mechanical or electrical device, appliance, contrivance, material, piece of apparatus, or  
10 equipment, which is identified by a serial number placed thereon by the manufacturer, the  
11 original serial number of which has been destroyed, removed, altered, covered, or defaced, is  
12 guilty of a Class 2 misdemeanor if the value of the property is ~~two~~ four hundred dollars or less.  
13 If the value of the property is more than ~~two~~ four hundred dollars and less than one thousand  
14 dollars, such person is guilty of a Class 1 misdemeanor. If the value of the property is one  
15 thousand dollars or greater, such person is guilty of a Class 4 felony.

16       Section 18. That § 40-15-39 be repealed.

17       ~~40-15-39. Any person who purchases livestock from a livestock auction agency, as defined~~  
18 ~~in this chapter, with intent to defraud is guilty of livestock fraud. The failure of such purchaser~~  
19 ~~to tender payment in full within four days of the date of purchase, is prima facie evidence of~~  
20 ~~intent to defraud.~~

21       ~~Livestock fraud is a Class 4 felony.~~

22       Section 19. That § 40-38-4 be amended to read as follows:

23       40-38-4. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a ~~Class 6~~ felony  
24 Class 2 misdemeanor if there is damage of ~~at least five~~ four hundred dollars ~~and a Class 1~~

1 ~~misdemeanor or less. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class~~  
2 ~~1 misdemeanor if there is damage of an amount greater than four hundred dollars and less than~~  
3 ~~one thousand dollars. Any person who violates subdivision 40-38-2(1) or (6) is guilty of a Class~~  
4 ~~4 felony if there is damage of less than five hundred dollars one thousand dollars or greater. Any~~  
5 person who violates subdivisions 40-38-2(2) to (5), inclusive, is guilty of a ~~Class 6~~ Class 4  
6 felony.

7 Section 20. That § 47-31B-508 be amended to read as follows:

8 47-31B-508. (a) Criminal penalties. It is a ~~class four~~ Class 4 felony for any person that  
9 willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 47-  
10 31B-504 or the notice filing requirements of § 47-31B-302 or 47-31B-405, or that willfully  
11 violates § 47-31B-505 knowing the statement made to be false or misleading in a material  
12 respect, ~~upon conviction, shall be fined not more than ten thousand dollars per violation. An~~  
13 ~~individual convicted of violating a rule or order under this chapter may be fined, but may not~~  
14 ~~be imprisoned, if the individual did not have knowledge of the rule or order. A subsequent~~  
15 violation is a Class 3 felony.

16 ~~—(b) Criminal reference not required. The Attorney General or the proper prosecuting attorney~~  
17 ~~with or without a reference from the director, may institute criminal proceedings under this~~  
18 ~~chapter.~~

19 ~~—(c) No limitation on other criminal enforcement. This chapter does not limit the power of~~  
20 ~~this state to punish a person for conduct that constitutes a crime under other laws of this state.~~

21 Section 21. That § 51A-1-10 be amended to read as follows:

22 51A-1-10. It is a Class 4 felony for an officer, director, employee, or agent of a bank:

23 (1) With intent to deceive, to make any false or misleading statement or entry or omit  
24 any statement or entry that should be in any book, account, report, or statement of the

1 bank; or

2 (2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer  
3 or employee of the division.

4 Section 22. That § 52-1-12 be amended to read as follows:

5 52-1-12. It is a Class 4 felony for an officer, director, employee or agent of an association:

6 (1) With intent to deceive, to make a false or misleading statement or entry or to omit  
7 any statement or entry that should be made in a book, account report or statement of  
8 the association; or

9 (2) To obstruct a lawful examination of the association by an officer or employee of the  
10 Division of Banking.

11 Section 23. That § 58-4A-2 be amended to read as follows:

12 58-4A-2. For purposes of this chapter, a person commits a fraudulent insurance act if the  
13 person:

14 (1) Knowingly and with intent to defraud or deceive issues or possesses fake or  
15 counterfeit insurance policies, certificates of insurance, insurance identification cards,  
16 or insurance binders;

17 (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives  
18 money for the purpose of purchasing insurance and converts the money to the  
19 person's own benefit or for a purpose not intended or authorized by an insured or  
20 prospective insured;

21 (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds,  
22 premiums, credits, or other property of an insurer or person engaged in the business  
23 of insurance or of an insured or prospective insured;

24 (4) Knowingly and with intent to defraud or deceive makes any false entry of a material

1 fact in or pertaining to any document or statement filed with or required by the  
2 Division of Insurance;

3 (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts,  
4 or destroys assets or records of an insurer or other person engaged in the business of  
5 insurance or attempts to remove, conceal, alter, divert, or destroy assets or records  
6 of an insurer or other person engaged in the business of insurance;

7 (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or  
8 prepares with knowledge or belief that it will be presented to or by an insurer, or any  
9 insurance producer of an insurer, any statement as part of a claim, in support of a  
10 claim, or in denial of a claim for payment or other benefit pursuant to an insurance  
11 policy knowing that the statement contains any false, incomplete, or misleading  
12 information concerning any fact or thing material to a claim;

13 (7) Assists, abets, solicits, or conspires with another to prepare or make any statement  
14 that is intended to be presented to or by an insurer or person in connection with or in  
15 support of any claim for payment or other benefit, or denial, pursuant to an insurance  
16 policy knowing that the statement contains any false, incomplete, or misleading  
17 information concerning any fact or thing material to the claim; or

18 (8) Makes any false or fraudulent representations as to the death or disability of a policy  
19 or certificate holder in any statement or certificate for the purpose of fraudulently  
20 obtaining money or benefit from an insurer.

21 Any violation of this section for an amount of ~~five~~ four hundred dollars or less is a ~~Class 1~~  
22 Class 2 misdemeanor. Any violation of this section for an amount in excess of ~~five~~ four hundred  
23 dollars and less than one thousand dollars is a Class 1 misdemeanor. Any violation of this  
24 section for an amount of one thousand dollars and greater is a Class 4 felony. Any other

1 violation of this section is a Class 1 misdemeanor.

2 Section 24. That § 58-33-37 be amended to read as follows:

3 58-33-37. Any person who knowingly makes any false or fraudulent statement or  
4 representation with reference to any application for insurance is guilty of a Class 1  
5 misdemeanor. Any person who knowingly presents or causes to be presented a false or  
6 fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof  
7 in support of such a claim for the payment of a loss upon a contract of insurance, or who  
8 prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of  
9 loss, or other document or writing, with intent that the same may be presented or used in support  
10 of such a claim, is guilty of a ~~Class 1~~ Class 2 misdemeanor if such claim is for an amount of ~~five~~  
11 four hundred dollars or less; a Class 1 misdemeanor if such claim is for an amount greater than  
12 four hundred dollars and less than one thousand dollars; and ~~is guilty of a Class 4 felony if such~~  
13 claim ~~exceeds five hundred~~ is one thousand dollars or greater.