

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

607E0174

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1092 - 02/12/2001

Introduced by: Representatives Brown (Jarvis), Abdallah, Broderick, Duniphan, Garnos,
and Konold and Senators Albers, Brosz, and Moore

1 FOR AN ACT ENTITLED, An Act to include in certain drug offenses the altered state of a
2 controlled drug or substance or marijuana once absorbed into the body.

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

4 Section 1. That § 22-42-1 be amended to read as follows:

5 22-42-1. Terms used in this chapter, ~~unless the context plainly requires otherwise,~~ mean:

6 (1) "Controlled drug or substance," a drug or substance, or an immediate precursor of a
7 drug or substance, listed in Schedules I through IV. The term includes an altered state
8 of a drug or substance listed in Schedules I through IV absorbed into the human body;

9 (2) "Counterfeit substance," a controlled drug or substance which, or the container of
10 labeling of which, without authorization, bears the trade-mark, trade name, or other
11 identifying mark, imprint, number, or device, or any likeness thereof, of a
12 manufacturer, distributor, or dispenser other than the person or persons who
13 manufactured, distributed, or dispensed such substance and which thereby falsely
14 purports or is represented to be the product of, or to have been distributed by, such

- 1 other manufacturer, distributor, or dispenser;
- 2 (3) "Deliver" or "delivery," the actual or constructive transfer of a controlled drug,
3 substance, or marijuana whether or not there exists an agency relationship;
- 4 (4) "Dispense," to deliver a controlled drug or substance to the ultimate user or human
5 research subject by or pursuant to the lawful order of a practitioner, including the
6 prescribing, administering, packaging, labeling, or compounding necessary to prepare
7 the substance for such delivery, and a "dispenser" is one who dispenses;
- 8 (5) "Distribute," to deliver a controlled drug, substance, or marijuana. "Distribution"
9 means the delivery of a controlled drug, substance, or marijuana;
- 10 (6) "Manufacture," the production, preparation, propagation, compounding, or
11 processing of a controlled drug or substance, either directly or indirectly by extraction
12 from substances of natural origin, or independently by means of chemical synthesis or
13 by a combination of extraction and chemical synthesis. A "manufacturer" includes any
14 person who packages, repackages, or labels any container of any controlled drug or
15 substance, except practitioners who dispense or compound prescription orders for
16 delivery to the ultimate user;
- 17 (7) "Marijuana," all parts of any plant of the genus *cannabis*, whether growing or not, in
18 its natural and unaltered state, except for drying or curing and crushing or crumbling.
19 The term includes an altered state of marijuana absorbed into the human body. The
20 term does not include fiber produced from the mature stalks of such plant, or oil or
21 cake made from the seeds of such plant;
- 22 (8) "Practitioner," a doctor of medicine, osteopathy, podiatry, dentistry, optometry, or
23 veterinary medicine licensed to practice his profession, or pharmacists licensed to
24 practice their profession; physician's assistants certified to practice their profession;

1 government employees acting within the scope of their employment; and persons
2 permitted by certificates issued by the Department of Health to distribute, dispense,
3 conduct research with respect to, or administer a substance controlled by chapter
4 34-20B;

5 (9) "Precursor" or "immediate precursor," a substance which the Department of Health
6 has found to be and by rule designates as being a principal compound commonly used
7 or produced primarily for use, and which is an immediate chemical intermediary used
8 or likely to be used, in the manufacture of a controlled drug or substance, the control
9 of which is necessary to prevent, curtail, or limit such manufacture;

10 (10) "Schedule I," "Schedule II," "Schedule III," and "Schedule IV," those schedules of
11 drugs, substances, and immediate precursors listed in chapter 34-20B;

12 (11) "Ultimate user," a person who lawfully possesses a controlled drug or substance for
13 ~~his~~ that person's own use or for the use of a member of ~~his~~ that person's household or
14 for administration to an animal owned by ~~him~~ that person or by a member of ~~his~~ that
15 person's household.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

457E0461

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1110 - 02/12/2001

Introduced by: Representatives Hennies (Thomas), Bartling, Burg, Clark, Frost, Garnos, Hunhoff, Jensen, McCaulley, Rhoden, and Slaughter and Senators Albers, Diedrich (Elmer), McCracken, Putnam, and Vitter

1 FOR AN ACT ENTITLED, An Act to criminalize the delivery of certain contraband to juvenile
2 detention facilities and to revise the definition of contraband with regard to certain
3 correctional facilities.

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

5 Section 1. That § 24-11-48 be amended to read as follows:

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

13 Section 2. That § 24-2-14 be amended to read as follows:

14 24-2-14. No alcoholic beverages, prescription ~~or nonprescription~~ drugs, controlled

1 substances as defined by chapter 34-20B, ~~hallucinogen~~, marijuana, weapons as defined in
2 subdivision 22-1-2(10), or any article of indulgence may be possessed by any inmate of the state
3 penitentiary except by order of a physician, physician assistant, or nurse practitioner as defined
4 in chapters 36-4, 36-4A, and 36-9A, respectively, which order shall be in writing and for a
5 definite period. A violation of this section constitutes a felony pursuant to the following
6 schedule:

- 7 (1) Possession of alcoholic beverages or marijuana is a Class 6 felony;
- 8 (2) Possession of prescription ~~or nonprescription~~ drugs; or controlled substances ~~or~~
9 ~~hallucinogens~~ is a Class 4 felony;
- 10 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

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SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

831E0127

HOUSE TAXATION COMMITTEE ENGROSSED NO.

HB 1127 - 02/01/2001

Introduced by: Representatives Duenwald, Bartling, Brown (Jarvis), Garnos, Juhnke, and Slaughter and Senators Drake, Brosz, de Hueck, Hutmacher, Koskan, McIntyre, Putnam, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to modify the procedure for the remittance of the 911
2 surcharge.

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

4 Section 1. That § 34-45-8 be amended to read as follows:

5 34-45-8. Any charge imposed pursuant to §§ 34-45-3 and 34-45-4 and the amounts required
6 to be collected are to be remitted to the governing body quarterly. The amount of the charge
7 collected in one calendar quarter by the local exchange access company shall be remitted to the
8 governing body no later than ~~sixty~~ thirty days after the close of the calendar quarter. On or
9 before the sixteenth day of each month following, a return for the preceding quarter shall be filed
10 with the governing body in such form as the governing body and local exchange access company
11 shall agree upon. The local exchange access company required to file the return shall deliver the
12 return together with a remittance of the amount of the charge payable, to the governing body.
13 The local exchange access company shall maintain a record of collections made for a period of
14 one year after the collection.

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SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

448E0567

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1154 - 02/12/2001

Introduced by: Representatives Adelstein, Abdallah, Brown (Richard), and Duniphan and
Senator Whiting

1 FOR AN ACT ENTITLED, An Act to clarify the application of certain driving privilege
2 penalties with regard to juvenile adjudications.

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

4 Section 1. That § 32-12-52.4 be amended to read as follows:

5 32-12-52.4. Upon a first conviction or a first adjudication of delinquency for violation, while
6 in a motor vehicle, of § 35-9-2, the court shall suspend the driver's license or driving privilege
7 of any driver of a vehicle who was under the age of twenty-one when the offense occurred, for
8 a period of six months.

9 Upon a second or subsequent conviction or a second or subsequent adjudication of
10 delinquency for a violation, while in a motor vehicle, of § 35-9-2, the court shall suspend the
11 driver's license or driving privilege of any driver of a vehicle who was under the age of
12 twenty-one when the offense occurred, for a period of one year. For any offense under this
13 section, the court may issue an order permitting the person to operate a motor vehicle for
14 purposes of the person's employment or attendance at school.

1 Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified
2 Judicial System shall notify the Department of Commerce and Regulation of any conviction or
3 adjudication for a violation, while in a motor vehicle, of § 35-9-2 or chapter 32-23. The period
4 of suspension shall begin on the date the person's suspended driver's license is received by the
5 court or the Department of Commerce and Regulation. At the expiration of the period of
6 suspension, a person may make application to have the license reinstated and pay the license fee
7 as prescribed in § 32-12-47.1.

8 Section 2. That § 35-9-7 be amended to read as follows:

9 35-9-7. If the conviction or adjudication for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is
10 for a first offense, the court shall, in addition to any other penalty allowed by law, order the
11 ~~revocation~~ suspension of the defendant's driving privileges for a period not less than thirty days
12 and not to exceed one year. However, the court may issue an order permitting the person to
13 operate a motor vehicle for purposes of the person's employment or attendance at school or to
14 court-ordered counseling programs during the hours of the day and the days of the week set
15 forth in the order. The court may also restrict the privilege in such manner as it sees fit for a
16 period not to exceed one year.

17 If the conviction or adjudication for a violation of § 35-9-1, 35-9-1.1, or 35-9-2 is for a
18 second or subsequent offense, the court shall, in addition to any other penalty allowed by law,
19 order the ~~revocation~~ suspension of the defendant's driving privileges for a period not less than
20 sixty days and not to exceed one year.

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SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

545E0492

HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1236** - 01/31/2001

Introduced by: Representatives Konold, Abdallah, Broderick, Brown (Richard), Flowers,
and McCaulley and Senators Munson, Albers, Diedrich (Elmer),
Hutmacher, Staggers, Sutton (Dan), and Vitter

1 FOR AN ACT ENTITLED, An Act to authorize auction agencies to accept for sale vehicles
2 owned by vehicle manufacturers under certain conditions.

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

4 Section 1. That § 32-6B-36 be amended to read as follows:

5 32-6B-36. Any auction agency operating under the provisions of this chapter may accept for
6 sale at its option vehicles which are owned by vehicle dealers regularly licensed in either this or
7 some other state, or by the following entities if the vehicle is owned and titled by the entity and
8 acquired incident to its regular business:

9 (1) Any regulated lender as defined in § 54-3-14 or any financing institution licensed
10 pursuant to chapter ~~54-7~~ 54-4;

11 (2) Any financial institution chartered or licensed in any other jurisdiction; or

12 (3) Any insurance company authorized to do business in either this state or some other
13 state.

14 An auction agency may also accept from any manufacturer any vehicle that is owned by the

1 manufacturer and that has a manufacturer's certificate of origin or a valid title. Any vehicle with
2 a manufacturer's certificate of origin sold for a manufacturer may only be offered to the
3 manufacturer's franchised dealers with the same line vehicle make.

4 Any vehicle dealer, regularly licensed by this or some other state, may purchase any vehicle
5 from an auction agency, except as otherwise prohibited by this section. Any auction agency that
6 accepts for sale any vehicle not authorized by this section is guilty of a Class 1 misdemeanor.

7 Section 2. That subdivision (15) of § 32-6B-5 be amended to read as follows:

8 32-6B-5. The following persons are exempt from the provisions of this chapter:

- 9 (15) Any regulated lenders as that term is defined in § 54-3-14, any insurance company
10 authorized to do business in this state, or any financing institution as defined in and
11 licensed pursuant to chapter ~~54-7~~ 54-4 that acquires vehicles as an incident to its
12 regular business;

13

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247E0029

HOUSE ENGROSSED NO. **SB 2** - 02/05/2001

Introduced by: Senators Madden and Ham and Representatives McCoy and Slaughter at
the request of Interim Judiciary Committee

1 FOR AN ACT ENTITLED, An Act to prohibit employers from obtaining, seeking, or using
2 genetic information.

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

4 Section 1. That chapter 60-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 It is an unlawful employment practice for an employer to seek to obtain, to obtain, or to use
7 genetic information, as defined in section 2 of this Act, of an employee or a prospective
8 employee to distinguish between or discriminate against employees or prospective employees or
9 restrict any right or benefit otherwise due or available to an employee or a prospective employee.
10 However, it is not an unlawful employment practice for an employer to seek to obtain, to obtain,
11 or to use genetic information if:

- 12 (1) The employer is a law enforcement agency conducting a criminal investigation; or
13 (2) The employer relies on the test results from genetic information obtained by law
14 enforcement through a criminal investigation, the employer legally acquires the test
15 results, the employer keeps the test results confidential except as otherwise required

1 by law, and the employer uses the test results for the limited purpose of taking
2 disciplinary action against the employee.

3 Any employee or prospective employee claiming to be aggrieved by this unlawful employment
4 practice may bring a civil suit for damages in circuit court. The court may award reasonable
5 attorney fees and costs in addition to any judgment awarded to the employee or prospective
6 employee.

7 Section 2. That chapter 60-2 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 For the purposes of this Act, genetic information is information about genes, gene products,
10 and inherited characteristics that may derive from the individual or a family member. This includes
11 information regarding carrier status and information derived from laboratory tests that identify
12 mutations in specific genes or chromosomes, physical medical examinations, family histories, and
13 direct analysis of genes or chromosomes.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

145E0148 **SENATE EDUCATION COMMITTEE ENGROSSED NO.**
SB 146 - 02/08/2001

Introduced by: Senators Brosz, Daugaard, Ham, McCracken, Munson, and Olson (Ed) and
Representatives Garnos, Konold, McCoy, and Solum

1 FOR AN ACT ENTITLED, An Act to require that certain findings and recommendations of the
2 state fire marshal be included in a school board's minutes and to require certain inspections.

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

4 Section 1. The state fire marshal shall provide a written summary of findings and
5 recommendations resulting from school inspections to each member of the school board and to
6 the superintendent or chief administrative officer of a school district. The fire marshal's summary
7 shall be included in the minutes of the school board and shall be published in the same manner
8 as other school board minutes after a public hearing.

9 Section 2. The superintendent or chief administrative officer of a school district shall develop
10 a plan by which to comply with the recommendations of the state fire marshal. The plan shall be
11 included in the minutes of the school board and shall be published in the same manner as other
12 school board minutes.

13 Section 3. The school board who is responsible for implementing the recommendations of
14 the state fire marshal provided for in section 1 of this Act shall do so in a timely manner.

1 Section 4. Each superintendent or chief operating officer of a school district shall provide for
2 the physical inspection of any classroom building completed before 1950 by a licensed state
3 engineer. The inspection provided for by this section shall be completed no later than
4 September 1, 2002. The findings of the inspection shall be included in the minutes of the school
5 board, and shall be published in the same manner as other school board minutes after a public
6 hearing. The results of the inspection shall be filed with the Department of Education and
7 Cultural Affairs.

State of South Dakota

SEVENTY-SIXTH SESSION
LEGISLATIVE ASSEMBLY, 2001

445E0168

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 228 - 02/12/2001

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

Introduced by: Senators Staggers, Apa, de Hueck, Drake, Greenfield, Koetzle, Madden, and Sutton (Dan) and Representatives Gillespie, Begalka, Davis, Hennies (Don), Hennies (Thomas), Kooistra, McCaulley, McCoy, Teupel, and Van Gerpen

1 FOR AN ACT ENTITLED, An Act to provide for DNA testing for certain inmates for the
2 purposes of determining whether they may have been wrongfully convicted.

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

4 Section 1. Any person convicted of a felony and currently serving a term of imprisonment
5 may file a petition in the circuit court that entered the judgment of conviction in the person's case
6 requesting performance of forensic deoxyribonucleic acid (DNA) testing. The petition shall be
7 served on the state's attorney in the county of conviction. Any response shall be filed within sixty
8 days of the date on which the state's attorney was served with the petition.

9 Section 2. Before the court may grant the petition, the petitioner shall demonstrate that post-
10 conviction DNA analysis will:

- 11 (1) Meet the current test for scientific reliability;
- 12 (2) Show that the petitioner would be entitled to the testing and that the results would be
13 admissible if the case were being presently tried;

1 (3) Show that a favorable test result would most likely produce an acquittal in a new trial;
2 and

3 (4) Show that the testing will not impose an unreasonable burden on the state.

4 Section 3. The court, in its discretion, may order a hearing on the petition. The court may
5 appoint legal counsel for the petitioner if the court determines that person is indigent and that
6 appointment is in the best interests of justice. Any legal fees and expenses shall be paid by the
7 county from which the person was convicted.

8 Section 4. The court may grant the petition for DNA testing if it determines that petitioner
9 has met the four factors to test set out in section 2 of this Act and that DNA testing is suitable
10 under the circumstances. If the court grants the petition for DNA testing, the court order shall
11 identify the specific evidence to be tested and the DNA technology to be used. The testing shall
12 be conducted by a laboratory mutually agreed upon by the state and the person filing the petition.
13 If the parties cannot agree, the court's order shall designate the laboratory to conduct the testing.
14 DNA testing expenses shall be paid by the county from which the person was convicted.

15 Section 5. The result of any testing ordered under this Act shall be fully disclosed to the
16 person filing the petition and the state's attorney. If the test results do not result in a new trial,
17 the petitioner shall reimburse the county for the costs of the testing.

18 Section 6. Any law enforcement agency of the state shall retain any biological material
19 secured in connection with a criminal case for the period of time that any person remains
20 incarcerated in connection with that case. The agency may determine how the evidence is
21 retained. However, the evidence shall be retained in a condition suitable for further DNA testing.