

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

490H0145

## HOUSE BILL NO. 1122

Introduced by: Representatives Madsen, Abdallah, Duenwald, Duniphan, Elliott, Hennies (Thomas), McCaulley, Peterson (Bill), and Teupel and Senators de Hueck and Moore

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 motor vehicle.

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

4 Section 1. That § 32-23-10 be repealed.

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

12 ~~—(1)—If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~  
13 ~~or chemical analysis may be required unless the person has been arrested for a third,~~  
14 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~



1           ~~§ 32-23-4 or 32-23-4.6 or has been arrested for vehicular homicide under § 22-16-41~~  
2           ~~or vehicular battery under § 22-16-42;~~

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

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

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 That § 32-23-10.1 be repealed.

11     ~~32-23-10.1. If a person refuses to submit to chemical analysis of the person's blood, urine,~~  
12     ~~breath, or other bodily substance, or allow the withdrawal of blood or other bodily substance for~~  
13     ~~chemical analysis as provided in § 32-23-10, and that person subsequently stands trial for~~  
14     ~~violation of § 32-23-1 or 32-23-21, such refusal may be admissible into evidence at the trial.~~

15       Section 3. That § 32-23-11 be repealed.

16     ~~32-23-11. Any person subject to license revocation for failure to submit to the withdrawal~~  
17     ~~and chemical analysis required in § 32-23-10, and wishing to contest the revocation, shall~~  
18     ~~demand a hearing pursuant to chapter 1-26 within one hundred twenty days of arrest. If the~~  
19     ~~director of the Division of Commercial Inspection and Regulation finds that the law enforcement~~  
20     ~~officer complied with the law and the refusal was made by the person, the director shall revoke~~  
21     ~~that person's license to drive and any nonresident operating privileges for one year. The director~~  
22     ~~shall determine if the person is eligible to drive for the purpose of employment and may~~  
23     ~~promulgate rules pursuant to chapter 1-26 for determining that eligibility.~~

24     ~~The director of the Division of Commercial Inspection and Regulation may promulgate rules~~

1 for restricted licenses as follows:

2 ~~—(1)— Eligibility;~~

3 ~~—(2)— Application;~~

4 ~~—(3)— Determination;~~

5 ~~—(4)— Limitations; and~~

6 ~~—(5)— Grounds for revocation.~~

7 Section 4. That § 32-23-11.1 be repealed.

8 ~~—32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11~~  
9 ~~or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating~~  
10 ~~§ 32-23-1 is dismissed by the state prior to the departmental hearing and the person is not~~  
11 ~~convicted of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a~~  
12 ~~revocation order being issued.~~

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

14 ~~—32-23-13. If any operator of a motor vehicle in this state who has been requested to submit~~  
15 ~~to a chemical test fails to invoke the provision in § 32-23-11 which permits him to refuse to~~  
16 ~~submit to a test, then the failure to invoke the provision permitting a refusal to submit to a test~~  
17 ~~shall constitute consent and authority to administer a test notwithstanding the age of the operator~~  
18 ~~of the motor vehicle.~~

19 Section 6. That § 32-23-18 be repealed.

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

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

9 Section 8. 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 9. 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 admission~~  
17 ~~of refusal to submit to chemical analysis.~~

18 Section 10. That § 32-12A-36 be amended to read as follows:

19 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period  
20 of not less than one year:

21 (1) If convicted of a first violation of driving or being in actual physical control of a  
22 commercial motor vehicle while under the influence of alcohol, or any controlled drug  
23 or substance, in violation of § 32-23-1;

24 (2) If convicted of a first violation of driving or being in actual physical control of a

1 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol  
2 in that person's blood as shown by chemical analysis of that person's breath, blood or  
3 other bodily substance, in violation of § 32-12A-44;

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

6 (4) If convicted of a first violation of using a commercial motor vehicle in the commission  
7 of any felony; or

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

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