

State of South Dakota

SEVENTY-NINTH SESSION
LEGISLATIVE ASSEMBLY, 2004

459J0618

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1298 - 02/04/2004

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

Introduced by: Representatives Olson (Ryan), Cutler, Kraus, and Rave and Senators Ham-Burr, Abdallah, de Hueck, Jaspers, and Sutton (Dan)

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 That § 32-23-10 be repealed.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 That § 32-23-10.1 be repealed.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 ~~secretary of public safety finds that the law enforcement officer complied with the law and the~~
20 ~~refusal was made by the person, the secretary shall revoke that person's license to drive and any~~
21 ~~nonresident operating privileges for one year. The secretary shall determine if the person is~~
22 ~~eligible to drive for the purpose of employment and may promulgate rules pursuant to chapter~~
23 ~~1-26 for determining that eligibility.~~

24 ~~The secretary of public safety may promulgate rules for restricted licenses as follows:~~

- 1 ~~—(1)— Eligibility;~~
- 2 ~~—(2)— Application;~~
- 3 ~~—(3)— Determination;~~
- 4 ~~—(4)— Limitations; and~~
- 5 ~~—(5)— Grounds for revocation.~~

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 That § 32-23-11.1 be repealed.

7 ~~—32-23-11.1. A person's license to drive is not subject to revocation as provided in § 32-23-11~~
8 ~~or 32-23-18 if that person pleads guilty to violating § 32-23-1, or if the charge of violating~~
9 ~~§ 32-23-1 is dismissed by the state prior to the departmental hearing and the person is not~~
10 ~~convicted of a violation of § 32-24-1 or 32-24-8, or, if a hearing is not requested, prior to a~~
11 ~~revocation order being issued.~~

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 That § 32-23-13 be repealed.

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

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 That § 32-23-18 be repealed.

19 ~~—32-23-18. The Department of Public Safety shall revoke the license of any person arrested~~
20 ~~for violating § 32-23-1 or 32-23-21, who refuses to submit to a chemical analysis as directed~~
21 ~~by a law enforcement officer pursuant to § 32-23-10.~~

22 Section 7. That § 32-23-19 be repealed.

23 ~~—32-23-19. A law enforcement officer shall serve the notice of intent to revoke, on behalf of~~
24 ~~the Department of Public Safety and shall take possession of any driver's license issued by this~~

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

8 Section 8. That § 32-23-20 be repealed.

9 ~~— 32-23-20. The department shall revoke the person's license to drive and any nonresident~~
10 ~~operating privileges pursuant to § 32-23-11.~~

11 Section 9. That § 19-13-28.1 be repealed.

12 ~~— 19-13-28.1. Notwithstanding the provisions of § 19-13-28, when a person stands trial for~~
13 ~~driving while under the influence of alcohol or drugs, as provided under § 32-23-1, and that~~
14 ~~person has refused chemical analysis, as provided in § 32-23-10, such refusal is admissible into~~
15 ~~evidence. Such person may not claim privilege against self-incrimination with regard to~~
16 ~~admission of refusal to submit to chemical analysis.~~

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

18 32-12A-36. Any person is disqualified from driving a commercial motor vehicle for a period
19 of not less than one year:

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

23 (2) If convicted of a first violation of driving or being in actual physical control of a
24 commercial motor vehicle while there is 0.04 percent or more by weight of alcohol

1 in that person's blood as shown by chemical analysis of that person's breath, blood
2 or other bodily substance, in violation of § 32-12A-44;

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

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

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

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