

AN ACT

ENTITLED, An Act to revise certain drug and alcohol offenses, driving offenses, and other felonious offenses.

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

Section 1. That § 32-23-1 be amended to read as follows:

32-23-1. No person may drive or be in actual physical control of any vehicle while:

- (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;
- (3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving;
- (4) Under the combined influence of an alcoholic beverage and any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving; or
- (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Section 2. That § 32-23-1.1 be amended to read as follows:

32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 32-23-1 when the officer has probable cause to believe that the person to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-1 and that such violation occurred prior to or immediately following such traffic accident.

Section 3. That § 32-23-1.2 be amended to read as follows:

32-23-1.2. Every person operating a vehicle which has been involved in an accident or which is operated in violation of any of the provisions of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be administered by such officer. If such test indicates that such operator has consumed alcohol, the law enforcement officer may require such operator to submit to a chemical test in the manner set forth in this chapter.

Section 4. That § 32-23-1.3 be repealed.

Section 5. That § 32-23-2 be amended to read as follows:

32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less than thirty days. However, the court may in its discretion issue an order upon proof of financial responsibility, pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of employment, attendance at school, or attendance at counseling programs. The court may also order the revocation of the defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Section 6. That § 32-23-2.1 be amended to read as follows:

32-23-2.1. Any person convicted of a first offense pursuant to § 32-23-1 with a 0.17 percent or more by weight of alcohol in the person's blood shall, in addition to the penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine if the defendant is chemically dependent. The cost of such evaluation shall be paid by the defendant.

Section 7. That § 32-23-3 be amended to read as follows:

32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally revoke the defendant's driving privilege for a period of not less than one year. However, upon the successful

completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to drive for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 8. That § 32-23-4 be amended to read as follows:

32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty of a Class 6 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than one year from the date sentence is imposed or one year from the date of discharge from incarceration, whichever is later. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 9. That § 32-23-4.3 be amended to read as follows:

32-23-4.3. The plea and election of method of trial by the accused shall be first taken only on the first part of the information described in § 32-23-4.2 but before a plea is made the accused shall be informed by the judge, in absence of the jury, of the contents of the second part. There shall be entered in the minutes of the court the time and place when and where the judge so informed the accused, and like entry thereof shall be made in the judgment.

Section 10. That § 32-23-4.4 be amended to read as follows:

32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon proceeded with, and until such time no information as to the second part of the information may be divulged to the jury. If the accused elects a jury trial in the second part of the information, such trial

may be had to the same or another jury as the court may direct.

Section 11. That § 32-23-4.6 be amended to read as follows:

32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense, or subsequent offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall unconditionally revoke the defendant's driving privileges for such period of time as may be determined by the court, but in no event less than two years from the date sentence is imposed or two years from the date of discharge from incarceration, whichever is later. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the license revocation for the term of such revocation. Upon the successful completion of a court-approved chemical dependency counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person to operate a vehicle for the purposes of employment, attendance at school, or attendance at counseling programs.

Section 12. That § 32-23-6 be amended to read as follows:

32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been prescribed a drug under the laws of this state is not a defense against any charge of violating § 32-23-1.

Section 13. That § 32-23-7 be amended to read as follows:

32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle while under the influence of an alcoholic beverage, a violation of § 22-16-41, or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives rise to the following presumptions:

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, it is presumed that the defendant was not under the influence of an alcoholic beverage;

- (2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant;
- (3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, it is presumed that the defendant was under the influence of an alcoholic beverage.

Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0 cubic centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

Section 14. That § 32-23-8 be amended to read as follows:

32-23-8. The provisions of § 32-23-7 may not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of an alcoholic beverage.

Section 15.

Section 16. That § 32-23-10 be amended to read as follows:

32-23-10. Any person who operates any vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance and chemical analysis of the person's blood, breath, or other bodily substance to determine the amount of alcohol in the person's blood and to determine the presence of marijuana or any controlled drug or substance or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely driving.

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

the officer that:

- (1) If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal or chemical analysis may be required unless the person has been arrested for a third, fourth, or subsequent violation of § 32-23-1, constituting a felony offense under § 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41 or vehicular battery under § 22-16-42; or has been involved in an accident resulting in death or serious bodily injury of another person;
- (2) If the person refuses to submit to the withdrawal or chemical analysis, the person's driver's license shall be revoked for one year, unless pursuant to § 32-23-11.1 the person pleads guilty to a violation of § 32-23-1 or 32-23-21, prior to a revocation order being issued; and
- (3) The person has the right to have a chemical analysis performed by a technician of the person's own choosing at the person's own expense, in addition to the test requested by the officer.

Section 17.

Section 18.

Section 19.

Section 20.

Section 21.

Section 22. That § 32-23-14 be amended to read as follows:

32-23-14. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician, or medical technologist may withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. Any such authorized

person, acting on the presumption of consent, or any hospital employing any such person, is not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawal is administered with usual and ordinary care.

Section 23. That § 32-23-15 be amended to read as follows:

32-23-15. The person tested pursuant to § 32-23-10 may have a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist of the person's own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

Section 24. That § 32-23-16 be amended to read as follows:

32-23-16. Upon the request of the person who was tested pursuant to § 32-23-10, or upon the request of the person's attorney, the results of such analysis shall be made available to the person or to the person's attorney.

Section 25.

Section 26.

Section 27.

Section 28.

Section 29. That § 32-12A-46 be amended to read as follows:

32-12A-46. Any person who operates any commercial motor vehicle in this state is considered to have given consent to the withdrawal of blood or other bodily substance to determine the amount of alcohol in that person's blood, or to determine the presence of any controlled drug or substance or marijuana or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may render a person incapable of safely driving. The chemical analysis shall be administered at the direction of a law enforcement officer who after stopping or detaining the commercial motor vehicle driver has probable cause to believe that the driver was

driving or in actual physical control of a commercial motor vehicle while having any alcohol or drugs in that person's system. Any person requested by a law enforcement officer under this section to submit to a chemical analysis shall be advised by the officer that:

- (1) If the person refuses to submit to the chemical analysis, none shall be given; and
- (2) If the person refuses to submit to the chemical analysis the person shall be immediately placed out of service for a period of twenty-four hours and be disqualified from operating a commercial motor vehicle for a period of not less than one year; or
- (3) If the person submits to a chemical analysis which discloses that the person was operating the commercial motor vehicle while there was 0.04 percent or more by weight of alcohol in that person's blood the person shall be disqualified from operating a commercial motor vehicle for not less than one year.

Section 30. That § 32-12A-36 be amended to read as follows:

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

- (1) If convicted of a first violation of driving or being in actual physical control of a commercial motor vehicle while under the influence of alcohol, marijuana, any controlled drug or substance, or any other substance that may render a person incapable of safely driving, in violation of § 32-23-1;
- (2) If convicted of a first violation of driving or being in actual physical control of a commercial motor vehicle while there is 0.04 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance, in violation of § 32-12A-44;
- (3) If convicted of a first violation of leaving the scene of an accident while operating a commercial motor vehicle, in violation of § 32-34-5 or 32-34-6;

- (4) If convicted of a first violation of using a commercial motor vehicle in the commission of any felony other than a felony described in § 32-12A-38; or
- (5) For refusing to submit to a chemical analysis for purposes of determining the amount of alcohol in that person's blood while driving a commercial motor vehicle in violation of § 32-23-11, 32-12A-43, or 32-12A-46.

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

Section 31. That § 32-12A-43 be amended to read as follows:

32-12A-43. Notwithstanding any other provision of §§ 32-12A-1 to 32-12A-58, inclusive, no person may drive, operate, or be in actual physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in that person's system. A person who drives, operates, or is in actual physical control of a commercial motor vehicle within this state while having any measurable or detectable amount of alcohol in that person's system or who refuses to submit to an alcohol test under § 32-12A-46, shall be placed out of service for twenty-four hours.

Section 32. That § 32-20A-14 be amended to read as follows:

32-20A-14. The operator of a snowmobile is deemed the driver or operator of a vehicle within the meaning of chapter 32-23 and is subject to all the provisions of chapter 32-23 relating to driving while under the influence and is punishable under chapter 32-23 for any violation of that chapter.

Section 33. That chapter 42-8 be amended by adding thereto a NEW SECTION to read as follows:

The operator of a boat is deemed the driver or operator of a vehicle within the meaning of chapter 32-23 and is subject to all the provisions of chapter 32-23 relating to driving while under the influence and is punishable under chapter 32-23 for any violation of that chapter.

Section 34. That § 42-8-45 be repealed.

Section 35. That § 42-8-45.1 be repealed.

Section 36. That § 42-8-45.2 be repealed.

Section 37. That § 42-8-45.3 be repealed.

Section 38. That § 42-8-45.4 be repealed.

Section 39. That § 42-8-45.5 be repealed.

Section 40. That § 42-8-45.6 be repealed.

Section 41. That § 42-8-45.7 be repealed.

Section 42. That § 42-8-45.8 be repealed.

Section 43. That § 42-8-45.9 be repealed.

Section 44. That § 42-8-45.10 be repealed.

Section 45. That § 42-8-45.11 be repealed.

Section 46. That § 13-32-9 be amended to read as follows:

13-32-9. Any person adjudicated, convicted, the subject of a youth diversion program, or the subject of a suspended imposition of sentence for possession, use, or distribution of controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, is ineligible to participate in any extracurricular activity at any secondary school accredited by the Department of Education for one calendar year from the date of adjudication, conviction, placement in a youth diversion program, or suspended imposition of sentence. The one-year suspension may be reduced to sixty school days if the person participates in an assessment with a certified chemical dependency counselor and completes any recommended accredited intensive prevention or treatment program. If the assessment indicates the need for a higher level of care, the student is required to complete the prescribed program before becoming eligible to participate in extracurricular activities. Upon a subsequent adjudication, conviction, or suspended imposition of sentence for possession, use, or distribution of

controlled drugs or substances or marijuana as defined in chapter 22-42, or for ingesting, inhaling, or otherwise taking into the body any substances as prohibited by § 22-42-15, by a court of competent jurisdiction, that person is ineligible to participate in any extracurricular activity while that person is attending any secondary school accredited by the Department of Education. Upon such a determination in any juvenile proceeding the Unified Judicial System shall give notice of that determination to the South Dakota High School Activities Association and the chief administrator of the school in which the person is enrolled.

As used in this section, the term, extracurricular activity, means any activity sanctioned by the South Dakota High School Activities Association. Upon placement of the person in a youth diversion program, the state's attorney who placed the person in that program shall give notice of that placement to the South Dakota High School Activities Association and chief administrator of the school in which the person is enrolled.

Section 47. That § 35-10-17 be amended to read as follows:

35-10-17. Any structure, conveyance, or place where alcoholic beverages are manufactured, sold, kept, bartered, given away, found, consumed, or used in violation of the laws of the state, relating to alcoholic beverages, and any alcoholic beverage and any property kept and used in maintaining the same, is hereby declared to be a common nuisance, and any person who knowingly maintains such a common nuisance is guilty of a Class 1 misdemeanor. A single instance of manufacturing, selling, keeping, bartering, giving away, finding, consuming, or using alcoholic beverages in violation of the laws of this section is a Class 2 misdemeanor.

Section 48. That § 35-9-1.3 be amended to read as follows:

35-9-1.3. No person may be convicted of illegally selling any alcoholic beverage to any underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of, and the seller relied upon, any false age-bearing identification document that was furnished to the underage person

by any state agency or local law enforcement agency or any agent, employee, contractor, or associate of any state agency or local law enforcement agency for the purpose of attempting to illegally purchase any alcoholic beverage.

Section 49. That § 35-9-2 be amended to read as follows:

35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to purchase, attempt to purchase, possess, or consume alcoholic beverages except when consumed in a religious ceremony and given to that person by an authorized person. It is a Class 2 misdemeanor for any person under the age of twenty-one to misrepresent the person's age with the use of any document for the purpose of purchasing or attempting to purchase alcoholic beverages from any licensee licensed under this title.

Section 50. That § 35-9-2.3 be repealed.

Section 51. That § 35-9-4.1 be repealed.

Section 52. That § 35-9-7 be amended to read as follows:

35-9-7. If the conviction or adjudication for a violation of §35-9-2 is for a second or subsequent offense, the court shall, in addition to any other penalty allowed by law, order the suspension of the person's driving privileges for a period not to exceed thirty days. However, the court may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs.

Section 53. That § 35-9-8 be repealed.

Section 54. That § 32-12-52.3 be amended to read as follows:

32-12-52.3. Upon a first conviction or a first adjudication of delinquency for any violation, while in a vehicle, of §§ 22-42-5 to 22-42-9, inclusive, 22-42A-3, or 22-42A-4, the court shall revoke the driver license or driving privilege of the driver so convicted for a period of thirty days.

Upon a second conviction or a second adjudication of delinquency for any violation, while in a vehicle, of §§ 22-42-5 to 22-42-9, inclusive, 22-42A-3, or 22-42A-4, the court shall, if such second conviction or adjudication occurred within four years of the first conviction or adjudication, revoke the driver license or driving privilege of the driver so convicted for a period of one hundred eighty days.

Upon a third or subsequent conviction or a third or subsequent adjudication of delinquency for a violation, while in a vehicle, of §§ 22-42-5 to 22-42-9, inclusive, 22-42A-3, or 22-42A-4, the court shall, if such third or subsequent conviction or adjudication occurred within four years of the previous conviction or adjudication, revoke the driver license or driving privilege of the driver so convicted for a period of one year or until the person's seventeenth birthday, whichever is a longer period of time. For any offense under this section, the court may issue an order, upon proof of financial responsibility pursuant to § 32-35-43.1, permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or counseling programs. Notwithstanding the provisions of chapters 26-7A, 26-8A, 26-8B, and 26-8C, the Unified Judicial System shall notify the Department of Public Safety of any conviction or adjudication of delinquency for a violation, while in a vehicle, of §§ 22-42-5 to 22-42-9, inclusive, 22-42A-3, or 22-42A-4. The period of revocation shall begin on the date the person's revoked driver license is received by the court or the department. At the expiration of the revocation period, a person may make application as provided by law and shall pay the license fee prescribed in § 32-12-47.1.

Section 55. That § 32-12-52.4 be amended to read as follows:

32-12-52.4. Upon a first conviction or a first adjudication as a child in need of supervision for a violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving privilege of the driver, if the driver was under the age of twenty-one when the offense occurred, for a period of thirty days.

Upon a second conviction or a second adjudication as a child in need of supervision for a violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving privilege of the driver, if the driver was under the age of twenty-one when the offense occurred, for a period of one hundred eighty days.

Upon a third or subsequent conviction or a third or subsequent adjudication as a child in need of supervision for a violation of § 35-9-2 while in a vehicle, the court shall suspend the driver license or driving privilege of the driver, if the driver was under the age of twenty-one when the offense occurred, for a period of one year. For any offense under this section, the court may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs.

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

Section 56. That § 32-24-3 be amended to read as follows:

32-24-3. If a conviction for a violation of § 32-24-1 is for a second or subsequent offense within a period of one year, such person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, order that the defendant's driving privilege be revoked for thirty days. However, the court may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs. The court may also order the revocation of the

defendant's driving privilege for a further period not to exceed one year or restrict the privilege in such manner as it sees fit for a period not to exceed one year.

Section 57. That § 32-23-21 be amended to read as follows:

32-23-21. It is a Class 2 misdemeanor for any person under the age of twenty-one years to drive, operate, or be in actual physical control of any vehicle:

- (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the person's blood as shown by chemical analysis of the person's breath, blood, or other bodily substance; or
- (2) After having consumed marijuana or any controlled drug or substance for as long as physical evidence of the consumption remains present in the person's body.

If a person is found guilty of or adjudicated for a violation of this section, the Unified Judicial System shall notify the Department of Public Safety. Upon conviction or adjudication, the court shall suspend that person's driver's license or operating privilege for a period of thirty days for a first offense, one hundred eighty days for a second offense, or one year for any third or subsequent offense. However, the court may, upon proof of financial responsibility pursuant to § 32-35.43.1, issue an order permitting the person to operate a vehicle for purposes of the person's employment, attendance at school, or attendance at counseling programs.

Section 58. That § 22-16-41 be amended to read as follows:

22-16-41. Any person who, while under the influence of an alcoholic beverage, any controlled drug or substance, marijuana, or a combination thereof, without design to effect death, operates or drives a vehicle of any kind in a negligent manner and thereby causes the death of another person, including an unborn child, is guilty of vehicular homicide. Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the court may also order that the driver's license of any person convicted of vehicular homicide be revoked for such period of time as may be

determined by the court but in no case less than two years.

Section 59. That § 22-34-29 be amended to read as follows:

22-34-29. In addition to any other penalty imposed by law, if any person is convicted of violating, or any person under the age of eighteen is adjudicated to have violated, the provisions of § 22-34-1 or 22-34-27, and if the crime occurred while driving a vehicle or while being a passenger in a vehicle, the court shall order the driving privileges of such person suspended for one hundred eighty days, if the damage is one thousand dollars or more.

For the purposes of this section, all acts of vandalism that are part of a course of conduct shall be considered one violation for the purposes of determining damage. For the purposes of this section, all acts of vandalism that are part of a course of conduct involving driving a vehicle or being a passenger in a vehicle shall be deemed to have occurred while driving a vehicle or being a passenger in a vehicle.

Section 60. That § 32-12-15 be amended to read as follows:

32-12-15. The issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit is on a probationary basis. The Department of Public Safety upon the receipt of a record of conviction for a traffic violation or for a violation of the restrictions in § 32-12-11, 32-12-11.1, 32-12-12, 32-12-12.1, 32-12-13, or 32-12-14, committed prior to the minor's sixteenth birthday shall suspend the minor's driving privileges according to the following schedule:

- (1) A felony or Class 1 misdemeanor traffic conviction--suspension until the minor's sixteenth birthday or as otherwise required by law;
- (2) A first Class 2 misdemeanor traffic conviction--suspension for thirty days or as otherwise required by law;
- (3) A first conviction of a violation of the conditions of an instruction permit, a motorcycle

instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit--suspension for thirty days or as otherwise required by law;

(4) A second Class 2 misdemeanor traffic conviction--suspension until the minor's sixteenth birthday or for ninety days, whichever period is longer, or as otherwise required by law; and

(5) A second conviction of a violation of the conditions of an instruction permit, a motorcycle instruction permit, a restricted minor's permit, or a motorcycle restricted minor's permit--suspension until the minor's sixteenth birthday or for ninety days, whichever period is longer, or as otherwise required by law.

No permit may be suspended for a first violation of § 32-14-9.1, 32-21-27, 32-25-5, 32-26-20, or 34A-7-7.

If a minor has no instruction permit, motorcycle instruction permit, restricted minor's permit, or motorcycle restricted minor's permit and is convicted of any traffic violation prior to the minor's sixteenth birthday, the department shall suspend or revoke the minor's driving privilege or privilege to apply for a driver license as provided in this section. A conviction for any traffic violation that occurs prior to the issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license or an operator's license shall be placed on the driving record and given the same consideration as any violation that occurs following the issuance of an instruction permit, motorcycle instruction permit, restricted minor's permit, motorcycle restricted minor's permit, motorcycle operator's license, or an operator's license.

Section 61. That § 32-35-121 be repealed.

Section 62. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

Any reference in this chapter to the weight of any controlled drug or substance includes the

weight of any cutting or mixing agent.

Section 63. That § 22-42-2 be amended to read as follows:

22-42-2. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedules I or II; possess with intent to manufacture, distribute, or dispense, a substance listed in Schedules I or II; create or distribute a counterfeit substance listed in Schedules I or II; or possess with intent to distribute a counterfeit substance listed in Schedules I or II. A violation of this section is a Class 4 felony. However, the distribution of a substance listed in Schedules I or II to a minor is a Class 2 felony. In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a violation of this section.

Section 64. That § 22-42-2.3 be repealed.

Section 65. That § 22-42-3 be amended to read as follows:

22-42-3. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedule III; possess with intent to manufacture, distribute, or dispense, a substance listed in Schedule III; create or distribute a counterfeit substance listed in Schedule III; or possess with intent to distribute a counterfeit substance listed in Schedule III. A violation of this section is a Class 5 felony. However, the distribution of a substance listed in Schedule III to a minor is a Class 4 felony. In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a violation of this section.

Section 66. That § 22-42-4 be amended to read as follows:

22-42-4. Except as authorized by this chapter or chapter 34-20B, no person may manufacture, distribute, or dispense a substance listed in Schedule IV; possess with intent to manufacture, distribute, or dispense, a substance listed in Schedule IV; create or distribute a counterfeit substance

listed in Schedule IV; or possess with intent to distribute a counterfeit substance listed in Schedule IV. A violation of this section is a Class 5 felony. However, the distribution of a substance listed in Schedule IV to a minor is a Class 4 felony. In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a violation of this section.

Section 67. That § 22-42-5 be amended to read as follows:

22-42-5. No person may knowingly possess a controlled drug or substance listed in Schedule I or II unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section is a Class 4 felony.

Section 68. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

No person may knowingly possess a controlled drug or substance listed in Schedule III or IV unless the substance was obtained directly or pursuant to a valid prescription or order from a practitioner, while acting in the course of the practitioner's professional practice or except as otherwise authorized by chapter 34-20B. A violation of this section is a Class 6 felony.

Section 69. That § 22-42-6 be amended to read as follows:

22-42-6. No person may knowingly possess marijuana. It is a Class 2 misdemeanor to possess less than two grams of marijuana. It is a Class 1 misdemeanor to possess two grams of marijuana but less than two ounces of marijuana. It is a Class 6 felony to possess two ounces but less than one pound of marijuana. It is a Class 5 felony to possess one to ten pounds of marijuana. It is a Class 4 felony to possess more than ten pounds of marijuana. In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a felony violation of this section.

Section 70. That § 22-42-7 be amended to read as follows:

22-42-7. The distribution, or possession with intent to distribute, of less than one-half ounce of marijuana without consideration is a Class 1 misdemeanor; otherwise, the distribution, or possession with intent to distribute, of two ounces or less of marijuana is a Class 6 felony. However, the distribution of two ounces or less of marijuana to a minor for consideration is a Class 5 felony. The distribution, or possession with intent to distribute, of more than two ounces but less than one pound of marijuana is a Class 5 felony. However, the distribution of more than two ounces but less than one pound of marijuana to a minor is a Class 4 felony. The distribution, or possession with intent to distribute, of one pound to ten pounds, inclusive, of marijuana is a Class 4 felony. However, the distribution of one pound to ten pounds, inclusive, of marijuana to a minor is a Class 3 felony. The distribution, or possession with intent to distribute, of more than ten pounds of marijuana is a Class 3 felony. However, the distribution of more than ten pounds of marijuana to a minor is a Class 2 felony. In addition to any criminal penalty, a civil penalty, not to exceed one hundred thousand dollars, may be imposed upon a conviction of a felony violation of this section.

Section 71. That § 22-42-10 be amended to read as follows:

22-42-10. Any person who knowingly keeps or maintains a place which is resorted to by persons using controlled drugs and substances for the purpose of using such substances, or which is used for the keeping or selling of such substances, is guilty of a Class 5 felony.

Section 72. That § 22-42-19 be amended to read as follows:

22-42-19. Any person who commits a violation of § 22-42-2, 22-42-3, or 22-42-4, or a felony violation of § 22-42-7 is guilty of a Class 4 felony, if such activity has taken place:

- (1) In, on, or within one thousand feet of real property comprising a public or private elementary or secondary school or a playground; or
- (2) In, on, or within three hundred feet of real property comprising a public or private youth

center, public swimming pool, or video arcade facility The sentence imposed for a conviction under this section carries a minimum sentence of imprisonment in the state penitentiary of five years. Any sentence imposed under this section shall be consecutive to any other sentence imposed for the principal felony. The court may not place on probation, suspend the execution of the sentence, or suspend the imposition of the sentence of any person convicted of a violation of this section. However, the sentencing court may impose a sentence other than that specified in this section if the court finds that mitigating circumstances exist which require a departure from the mandatory sentence provided for in this section. The court's finding of mitigating circumstances allowed by this section and the factual basis relied upon by the court shall be in writing.

It is not a defense to the provisions of this section that the defendant did not know the distance involved. It is not a defense to the provisions of this section that school was not in session.

Section 73. That § 22-42A-4 be amended to read as follows:

22-42A-4. No person, knowing the drug related nature of the object, may, for consideration, deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance or marijuana in violation of this chapter. Any person who violates any provision of this section is guilty of a Class 6 felony.

Section 74. That § 32-12-31 be amended to read as follows:

32-12-31. The Department of Public Safety may not issue any license under this chapter to any person who is an habitual drunkard, or is an habitual user of narcotic drugs, or is an habitual user of any other drug to a degree which renders that person incapable of safely driving a vehicle.

Section 75. That § 32-12-49.1 be amended to read as follows:

32-12-49.1. The following is a listing of moving traffic offenses and the number of points assessed for a conviction for each offense:

- | | | |
|-----|--|--------------|
| (1) | Driving under the influence | ten points |
| (2) | Reckless driving | eight points |
| (3) | Eluding/attempting to elude a police officer | six points |
| (4) | Drag racing | six points |
| (5) | Failure to yield right-of-way | four points |
| (6) | Improper passing | four points |
| (7) | Driving on wrong side of roadway | four points |
| (8) | Stop sign/light violation | three points |
| (9) | Other moving offenses | two points |

For the purpose of this section, "other moving offenses" does not include speeding offenses.

Section 76. That § 1-1-11 be repealed.

Section 77. That § 2-4-6 be amended to read as follows:

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

Section 78. That § 2-4-8 be amended to read as follows:

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

Section 79. That § 2-4-10 be amended to read as follows:

2-4-10. Every person who intentionally, by force or fraud, compels or attempts to compel either

branch of the Legislature of this state to pass, amend, or reject any bill or resolution, or to grant or refuse any petition, or to perform or omit to perform any other official act, is guilty of a Class 4 felony.

Section 80. That § 2-7-21 be amended to read as follows:

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

Section 81. That § 23A-28B-35 be amended to read as follows:

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

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

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

The state has a civil cause of action for relief against any person who violates this section in the amount of damages which the state has sustained as a result of such violation and, in addition, for punitive damages in an amount not more than double the amount of damages which the state has

sustained, together with interest, plus the cost of such suit.

Section 82. That § 24-11-48 be amended to read as follows:

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

Section 83. The code counsel shall transfer § 25-5A-7.1 to a newly created chapter in Title 22 entitled "Offenses Against the Family" and shall renumber the section accordingly and adjust all appropriate cross references.

Section 84. That § 25-7-15 be amended to read as follows:

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

Section 85. That § 25-10-13 be amended to read as follows:

25-10-13. If a temporary protection order or a protection order is granted pursuant to this chapter or is a foreign domestic violence protection order pursuant to § 25-10-12.1, and the respondent or person to be restrained knows of the order, violation of the order is a Class 1 misdemeanor. If any violation of this section constitutes an assault pursuant to § 22-18-1, the violation is a Class 6 felony. If a respondent or person to be restrained has been convicted of, or entered a plea of guilty to, two or more violations of this section, the factual basis for which occurred after the date of the second conviction, and occurred within five years of committing the current offense, the respondent or person to be restrained is guilty of a Class 6 felony for any third or subsequent offense. Any

proceeding under this chapter is in addition to other civil or criminal remedies.

Section 86. That § 31-28-23 be amended to read as follows:

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

Section 87. That § 32-33-18 be amended to read as follows:

32-33-18. Any driver of a vehicle who intentionally fails or refuses to bring a vehicle to a stop, when given visual or audible signal to bring the vehicle to a stop, is guilty of failure to stop at the signal of a law enforcement officer. The signal given by the law enforcement officer may be by hand, voice, emergency light, or siren. The officer giving the signal shall be in uniform, prominently displaying a badge of office, and the vehicle shall be appropriately marked showing it to be an official law enforcement vehicle.

Failure to stop at the signal of a law enforcement officer is a Class 2 misdemeanor. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs.

Section 88. That chapter 32-33 be amended by adding thereto a NEW SECTION to read as follows:

Any driver of a vehicle who, after failing or refusing to bring a vehicle to a stop pursuant to § 32-33-18, flees from the law enforcement officer or attempts to elude the pursuit of the law enforcement

officer is guilty of eluding. Eluding is a Class 1 misdemeanor. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial responsibility pursuant to § 32-35-113, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs.

Section 89. That chapter 32-33 be amended by adding thereto a NEW SECTION to read as follows:

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

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

Aggravated eluding is a Class 5 felony. In addition, the court may order that the defendant's driver's license be revoked for up to one year, but may issue an order, upon proof of financial

responsibility pursuant to § 32-35-113, allowing the defendant to operate a vehicle for purposes of the defendant's employment, attendance at school, or counseling programs. For any subsequent aggravated eluding violation, the court shall order that the defendant's driver's license be revoked for five years.

Section 90. That § 33-12-23 be amended to read as follows:

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

Section 91. That § 34-16-2 be amended to read as follows:

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

Section 92. That § 37-17-1 be amended to read as follows:

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

Section 93. That § 40-15-39 be amended to read as follows:

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

Livestock fraud is a Class 4 felony.

Section 94. That § 40-38-4 be amended to read as follows:

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

Section 95. That § 47-31B-508 be amended to read as follows:

47-31B-508. Criminal penalties. It is a Class 4 felony for any person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except § 47-31B-504 or the notice filing requirements of § 47-31B-302 or 47-31B-405, or that willfully violates § 47-31B-505 knowing the statement made to be false or misleading in a material respect. A subsequent violation is a Class 3 felony.

Section 96. That § 51A-1-10 be amended to read as follows:

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

- (1) With intent to deceive, to make any false or misleading statement or entry or omit any statement or entry that should be in any book, account, report, or statement of the bank;
or
- (2) To obstruct or endeavor to obstruct a lawful examination of the bank by an officer or

employee of the division.

Section 97. That § 52-1-12 be amended to read as follows:

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

- (1) With intent to deceive, to make a false or misleading statement or entry or to omit any statement or entry that should be made in a book, account report or statement of the association; or
- (2) To obstruct a lawful examination of the association by an officer or employee of the Division of Banking.

Section 98. That § 58-4A-2 be amended to read as follows:

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

- (1) Knowingly and with intent to defraud or deceive issues or possesses fake or counterfeit insurance policies, certificates of insurance, insurance identification cards, or insurance binders;
- (2) Is engaged in the business of insurance, whether authorized or unauthorized, receives money for the purpose of purchasing insurance and converts the money to the person's own benefit or for a purpose not intended or authorized by an insured or prospective insured;
- (3) Willfully embezzles, abstracts, steals, misappropriates, or converts money, funds, premiums, credits, or other property of an insurer or person engaged in the business of insurance or of an insured or prospective insured;
- (4) Knowingly and with intent to defraud or deceive makes any false entry of a material fact in or pertaining to any document or statement filed with or required by the Division of Insurance;
- (5) Knowingly and with intent to defraud or deceive removes, conceals, alters, diverts, or

destroys assets or records of an insurer or other person engaged in the business of insurance or attempts to remove, conceal, alter, divert, or destroy assets or records of an insurer or other person engaged in the business of insurance;

- (6) Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any insurance producer of an insurer, any statement as part of a claim, in support of a claim, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim;
- (7) Assists, abets, solicits, or conspires with another to prepare or make any statement that is intended to be presented to or by an insurer or person in connection with or in support of any claim for payment or other benefit, or denial, pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to the claim; or
- (8) Makes any false or fraudulent representations as to the death or disability of a policy or certificate holder in any statement or certificate for the purpose of fraudulently obtaining money or benefit from an insurer.

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

Section 99. That § 58-33-37 be amended to read as follows:

58-33-37. Any person who knowingly makes any false or fraudulent statement or representation

with reference to any application for insurance is guilty of a Class 1 misdemeanor. Any person who knowingly presents or causes to be presented a false or fraudulent claim for the purpose of obtaining any money or benefit, or who submits any proof in support of such a claim for the payment of a loss upon a contract of insurance, or who prepares, makes, or subscribes a false or fraudulent account, certificate, affidavit or proof of loss, or other document or writing, with intent that the same may be presented or used in support of such a claim, is guilty of a Class 2 misdemeanor if such claim is for an amount of four hundred dollars or less; a Class 1 misdemeanor if such claim is for an amount greater than four hundred dollars and less than one thousand dollars; and a Class 4 felony if such claim is one thousand dollars or greater.

Section 100. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

No person may ride a horse or any other animal while under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance. If, by so doing, the person poses a serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

Section 101. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

No person may ride a bicycle or any other nonmotorized vehicle while under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance. If, by so doing, the person poses a serious hazard to public safety, the person is guilty of a Class 1 misdemeanor.

Section 102. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as follows:

For purposes of this chapter, the term, vehicle, as defined in subdivision 32-14-1(37) does not

include bicycles, any other nonmotorized vehicles, and ridden animals.

Section 103. The provisions of this Act are effective on July 1, 2006.

Section 104. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

A first conviction under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least five years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under § 22-42-2 shall be punished by a mandatory sentence in the state penitentiary of at least five years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction for distribution to a minor shall be punished by a mandatory sentence in the state penitentiary of at least fifteen years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

The sentencing court may impose a sentence other than that which is required by this section if the court finds that the defendant provided timely and effective cooperation to law enforcement. The

factual basis finding timely and effective cooperation with law enforcement must be made in writing.

Section 105. That chapter 22-42 be amended by adding thereto a NEW SECTION to read as follows:

A conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence in the state penitentiary or county jail of at least thirty days, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence in the state penitentiary or county jail of at least one year, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. However, a first conviction for distribution to a minor under § 22-42-3 or 22-42-4 shall be punished by a mandatory sentence in the state penitentiary of at least ninety days, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section. A second or subsequent conviction for distribution to a minor shall be punished by a mandatory sentence in the state penitentiary of at least two years, which sentence may not be suspended. Probation, suspended imposition of sentence, or suspended execution of sentence may not form the basis for reducing the mandatory time of incarceration required by this section.

A conviction for the purposes of the mandatory sentence provisions of this chapter is the acceptance by a court of any plea, other than not guilty, including nolo contendere, or a finding of guilt by a jury or court.

The sentencing court may impose a sentence other than that which is required by this section if the court finds that the defendant provided timely and effective cooperation to law enforcement. The

factual basis finding timely and effective cooperation with law enforcement must be made in writing.

An Act to revise certain drug and alcohol offenses, driving offenses, and other felonious offenses.

=====

I certify that the attached Act
originated in the

SENATE as Bill No. 67

Secretary of the Senate

President of the Senate

Attest:

Secretary of the Senate

Speaker of the House

Attest:

Chief Clerk

Senate Bill No. 67

File No. _____

Chapter No. _____

=====

Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

=====

The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====

STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State