

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0435

HOUSE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1119 - 02/08/2006

Introduced by: Representatives Rounds, Cutler, Gillespie, Hargens, Hennies, O'Brien, and Rave and Senators Moore, Gray, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to repeal certain mandatory minimum sentences for driving
2 under the influence, to expand those substances under which a person may be found to be
3 under the influence, and to revise certain driving under the influence provisions for clarity
4 and consistency.

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

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

7 32-23-1. No person may drive or be in actual physical control of any vehicle while:

- 8 (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown
9 by chemical analysis of that person's breath, blood, or other bodily substance;
- 10 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
11 substance not obtained pursuant to a valid prescription, or any combination of an
12 alcoholic beverage, marijuana, or such controlled drug or substance;
- 13 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained
14 pursuant to a valid prescription, or any other substance, to a degree which renders the
15 person incapable of safely driving; ~~or~~



1 (4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any
2 controlled drug or substance obtained pursuant to a valid prescription, or any other
3 substance, to a degree which renders the person incapable of safely driving; or

4 (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the
5 body as prohibited by § 22-42-15.

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

7 32-23-1.1. A law enforcement officer may, without a warrant, arrest a person for a violation
8 of the provisions of § 32-23-1 when ~~he~~ the officer has probable cause to believe that the person
9 to be arrested has been involved in a traffic accident and has violated the provisions of § 32-23-
10 1 and that such violation occurred prior to or immediately following such traffic accident.

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

12 32-23-1.2. Every person operating a ~~motor~~ vehicle which has been involved in an accident
13 or which is operated in violation of any of the provisions of this chapter shall, at the request of
14 a law enforcement officer, submit to a breath test to be administered by such officer. If such test
15 indicates that such operator has consumed alcohol, the law enforcement officer may require such
16 operator to submit to a chemical test in the manner set forth in this chapter.

17 Section 4. That § 32-23-2 be amended to read as follows:

18 32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty
19 of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less
20 than thirty days. However, the court may in its discretion issue an order upon proof of financial
21 responsibility, pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for
22 purposes of ~~the person's~~ employment, attendance at school, or attendance at ~~court-ordered~~
23 ~~counseling programs during the hours of the day and the days of the week as set forth in the~~
24 ~~order~~. The court may also order the revocation of the defendant's driving privilege for a further

1 period not to exceed one year or restrict the privilege in such manner as it sees fit for a period
2 not to exceed one year.

3 Section 5. That § 32-23-2.1 be amended to read as follows:

4 32-23-2.1. Any person convicted of a first offense pursuant to ~~§ 32-23-2~~ § 32-23-1 with a
5 0.17 percent or more by weight of alcohol in ~~his~~ the person's blood shall, in addition to the
6 penalties provided in § 32-23-2, be required to undergo a court-ordered evaluation to determine
7 if the defendant ~~has an addiction to alcohol~~ is chemically dependent. The cost of such evaluation
8 shall be paid by the defendant.

9 Section 6. That § 32-23-3 be amended to read as follows:

10 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is
11 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
12 revoke the defendant's driving privilege for a period of not less than one year. However, upon
13 the successful completion of a court-approved ~~alcohol treatment~~ chemical dependency program,
14 and proof of financial responsibility pursuant to § 32-35-43.1, the court may permit the person
15 to drive for the ~~purpose~~ purposes of employment ~~and may restrict the privilege by the imposition~~
16 ~~of such conditions as the court sees fit,~~ attendance at school, or attendance at counseling
17 programs. If such person is convicted of driving without a license during that period, the person
18 shall be sentenced to the county jail for not less than three days, which sentence may not be
19 suspended.

20 Section 7. That § 32-23-4 be amended to read as follows:

21 32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty
22 of a Class 6 felony, and the court, in pronouncing sentence, shall ~~unconditionally revoke the~~
23 ~~defendant's driving privileges for such period of time as may be determined by the court, but in~~
24 ~~no event less than one year from the date sentence is imposed or one year from the date of~~

1 ~~discharge from incarceration~~ order that the driver's license of any person so convicted be
2 revoked for a period of not less than one year from the date sentence is imposed or one year
3 from the date of initial release from incarceration to parole supervision, whichever is later. If
4 the person is convicted of driving without a license during that period, he shall be sentenced to
5 the county jail for not less than ten days, which sentence may not be suspended.
6 Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the
7 license revocation for the term of such revocation. Upon the successful completion of a court-
8 approved chemical dependency counseling program, and proof of financial responsibility
9 pursuant to § 32-35-43.1, the court may permit the person to operate a vehicle for the purposes
10 of employment, attendance at school, or attendance at counseling programs.

11 Section 8. That § 32-23-4.3 be amended to read as follows:

12 32-23-4.3. The plea and election of method of trial by the accused shall be first taken only
13 on the first part of the information described in § 32-23-4.2 but before a plea is made the
14 accused shall be informed by the judge, in absence of the jury, of the contents of ~~his~~ the second
15 part. There shall be entered in the minutes of the court the time and place when and where the
16 judge so informed the accused, and like entry thereof shall be made in the judgment.

17 Section 9. That § 32-23-4.4 be amended to read as follows:

18 32-23-4.4. On a finding of guilty on the first part of the information described in § 32-23-4.2
19 a plea shall be taken and, if necessary, an election made on the second part and a trial thereon
20 proceeded with, and until such time no information as to the second part of the information ~~shall~~
21 may be divulged to the jury. If the accused ~~shall have elected~~ elects a jury trial in the second part
22 of the information, such trial may be had to the same or another jury as the court may direct.

23 Section 10. That § 32-23-4.6 be amended to read as follows:

24 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person

1 has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5
2 felony, and the court, in pronouncing sentence, shall ~~unconditionally revoke the defendant's~~
3 ~~driving privileges for such period of time as may be determined by the court, but in no event less~~
4 ~~than two years from the date sentence is imposed or two years from the date of discharge from~~
5 ~~incarceration~~ order that the driver's license of any person so convicted be revoked for a period
6 of not less than two years from the date sentence is imposed or two years from the date of initial
7 release from incarceration to parole supervision, whichever is later. If the person is convicted
8 of driving without a license during that period, the person shall be sentenced to the county jail
9 for not less than twenty days, which sentence may not be suspended. Notwithstanding § 23A-27-
10 19, the court retains jurisdiction to modify the conditions of the license revocation for the term
11 of such revocation. Upon the successful completion of a court-approved chemical dependency
12 counseling program, and proof of financial responsibility pursuant to § 32-35-43.1, the court
13 may permit the person to operate a vehicle for the purposes of employment, attendance at
14 school, or attendance at counseling programs.

15 Section 11. That § 32-23-4.7 be amended to read as follows:

16 32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent
17 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,
18 the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall
19 ~~unconditionally revoke the defendant's driving privileges for such period of time as may be~~
20 ~~determined by the court, but in no event less than two years from the date sentence is imposed~~
21 ~~or two years from the date of discharge from incarceration~~ order that the driver's license of any
22 person so convicted be revoked for a period of not less than three years from the date sentence
23 is imposed or three years from the date of initial release from incarceration to parole
24 supervision, whichever is later. If the person is convicted of driving without a license during that

1 period, the person shall be sentenced to the county jail for not less than twenty days, which
2 sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to
3 modify the conditions of the license revocation for the term of such revocation. Upon the
4 successful completion of a court-approved chemical dependency counseling program, and proof
5 of financial responsibility pursuant to § 32-35-43.1, the court may permit the person to operate
6 a vehicle for the purposes of employment, attendance at school, or attendance at counseling
7 programs.

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

9 32-23-6. The fact that any person charged with a violation of § 32-23-1 is or has been
10 ~~entitled to use~~ prescribed a drug under the laws of this state ~~shall is not constitute~~ a defense
11 against any charge of violating ~~said section~~ § 32-23-1.

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

13 32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle
14 while under the influence of ~~intoxicating liquor~~ an alcoholic beverage, a violation of § 22-16-41,
15 or a violation of § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged
16 as shown by chemical analysis of the defendant's blood, breath, or other bodily substance gives
17 rise to the following presumptions:

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

21 (2) If there was at that time in excess of five hundredths percent but less than eight
22 hundredths percent by weight of alcohol in the defendant's blood, such fact does not
23 give rise to any presumption that the defendant was or was not under the influence
24 of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with

1 other competent evidence in determining the guilt or innocence of the defendant;

2 (3) If there was at that time eight hundredths percent or more by weight of alcohol in the
3 defendant's blood, it is presumed that the defendant was under the influence of
4 ~~intoxicating liquor~~ an alcoholic beverage.

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

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

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

11 Section 15. That chapter 32-23 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Any driving permit issued by the court to any person, who has been convicted of a violation
14 of § 32-23-1 within the last ten years or any driving permit issued pursuant to § 32-23-2, if that
15 person had 0.17 percent or more by weight of alcohol in that person's blood, shall be
16 conditioned on the person's total abstinence from the use of alcohol. The court shall immediately
17 revoke the permit upon a showing of proof by a preponderance of the evidence that the person
18 has violated this condition.

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

20 22-16-41. Any person who, while under the influence of an alcoholic beverage, any
21 controlled drug or substance, marijuana, or a combination thereof, without design to effect
22 death, operates or drives a motor vehicle of any kind in a negligent manner and thereby causes
23 the death of another person, including an unborn child, is guilty of vehicular homicide.
24 Vehicular homicide is a Class 3 felony. In addition to any other penalty prescribed by law, the

1 ~~court may also order that the driver's license of any person convicted of vehicular homicide be~~
2 ~~revoked for such period of time as may be determined by the court~~ shall order that the driver's
3 license of any person convicted of vehicular homicide be revoked for a period of not less than
4 ten years from the date sentence is imposed or ten years from the date of initial release from
5 incarceration to parole supervision, whichever is later.

6 Section 17. That § 22-18-36 be amended to read as follows:

7 22-18-36. Any person who, while under the influence of an alcoholic beverage, any
8 controlled drug or substance, marijuana, or a combination thereof, without design to effect
9 serious bodily injury, operates or drives a motor vehicle of any kind in a negligent manner and
10 thereby causes the serious bodily injury of another person, including an unborn child, is guilty
11 of vehicular battery. Vehicular battery is a Class 4 felony. In addition to any other penalty
12 prescribed by law, the court ~~may also order that the driver's license of any person convicted of~~
13 ~~vehicular battery be revoked for a period of two years subsequent to release from incarceration~~
14 shall order that the driver's license of any person convicted of vehicular battery be revoked for
15 a period of not less than three years from the date sentence is imposed or three years from the
16 date of initial release from incarceration to parole supervision, whichever is later.