

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

664M0159

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

SB 1 - 01/19/2006

Introduced by: Senators Schoenbeck, Abdallah, Bogue, Koskan, and McCracken and
Representatives Hennies, Cutler, Deadrick, Dykstra, Kraus, McCoy,
McLaughlin, Michels, Murschel, O'Brien, Rhoden, Roberts, Rounds, Tornow,
and Willadsen

1 FOR AN ACT ENTITLED, An Act to provide for the mandatory withdrawal of blood or other
2 bodily substances subsequent to arrest for driving while under influence.

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

4 Section 1. That § 32-23-10 be amended to read as follows:

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 or any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15
10 or any other substance that may render a person incapable of safely driving. The arresting law
11 enforcement officer may, subsequent to the arrest of any operator for a violation of § 32-23-1,
12 require the operator to submit to the withdrawal of blood or other bodily substances as evidence.
13 ~~— The person shall be requested by the officer to submit to the withdrawal of blood or other~~
14 ~~bodily substance for chemical analysis or chemical analysis of the person's breath and shall be~~



1 advised by the officer that:

2 ~~—(1)— If the person refuses to submit to the withdrawal or chemical analysis, no withdrawal~~
3 ~~or chemical analysis may be required unless the person has been arrested for a third,~~
4 ~~fourth, or subsequent violation of § 32-23-1, constituting a felony offense under~~
5 ~~§ 32-23-4 or 32-23-4.6; has been arrested for vehicular homicide under § 22-16-41~~
6 ~~or vehicular battery under § 22-16-42, or has been involved in an accident resulting~~
7 ~~in death or serious bodily injury of another person;~~

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

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

15 Section 2. That § 32-23-15 be amended to read as follows:

16 32-23-15. ~~The~~ Any person tested pursuant to §§ 32-23-10, 32-23-13, and 32-23-14 shall be
17 permitted to have a physician, laboratory technician, registered nurse, physician's assistant, or
18 medical technologist of ~~his~~ the person's own choosing administer the chemical analysis in
19 addition to the one administered at the direction of the law enforcement officer.

20 Section 3. That § 32-23-16 be amended to read as follows:

21 32-23-16. Upon the request of ~~the~~ any person who was tested pursuant to §§ 33-23-10, 32-
22 23-13, and 32-23-14, or upon the request of ~~his~~ the person's attorney, the results of such analysis
23 shall be made available to ~~him~~ the person or to ~~his~~ the person's attorney.