

# State of South Dakota

EIGHTY-FIRST SESSION  
LEGISLATIVE ASSEMBLY, 2006

295M0437

## SENATE BILL NO. 98

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

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding age requirements for  
2 the consumption of alcoholic beverages.

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

4 Section 1. That § 35-10-17 be amended to read as follows:

5 35-10-17. Any structure, conveyance, or place where alcoholic beverages are manufactured,  
6 sold, kept, bartered, given away, found, consumed, or used in violation of the laws of the state,  
7 relating to alcoholic beverages, and ~~all~~ any alcoholic ~~beverages~~ beverage and any property kept  
8 and used in maintaining the same, is hereby declared to be a common nuisance, and any person  
9 who knowingly maintains such a common nuisance is guilty of a Class 1 misdemeanor. A single  
10 instance of manufacturing, selling, keeping, bartering, giving away, finding, consuming, or  
11 using alcoholic beverages in violation of the laws of this section is a Class 2 misdemeanor.

12 Section 2. That § 35-9-1.3 be repealed.

13 ~~— 35-9-1.3. No person may be convicted of illegally selling any alcoholic beverage to any~~  
14 ~~underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of,~~  
15 ~~and the seller relied upon, any false age-bearing identification document that was furnished to~~



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

4 Section 3. That § 35-9-2 be amended to read as follows:

5 35-9-2. It is a Class 2 misdemeanor for any person under the age of twenty-one years to  
6 purchase, attempt to purchase, ~~or~~ possess, or consume alcoholic beverages except when  
7 consumed in a religious ceremony and given to said that person by an authorized person, ~~or.~~ It  
8 is a Class 2 misdemeanor for any person under the age of twenty-one to misrepresent his the  
9 person's age with the use of any document for the purpose of purchasing or attempting to  
10 purchase alcoholic beverages from any licensee licensed under this title.

11 Section 4. That § 35-9-2.3 be repealed.

12 ~~— 35-9-2.3. Except as provided in §§ 35-9-1 and 35-9-1.1, it is a Class 1 misdemeanor for any~~  
13 ~~person twenty-one years of age or older to purchase or otherwise acquire alcoholic beverages~~  
14 ~~from a retail establishment and to give or resell the alcoholic beverages to any person under the~~  
15 ~~age of twenty-one years.~~

16 Section 5. That § 35-9-4.1 be repealed.

17 ~~— 35-9-4.1. The South Dakota Legislature enacts chapter 261 of the 1987 Session Laws to~~  
18 ~~raise the state's minimum drinking age to twenty-one years of age solely under the duress of a~~  
19 ~~funding sanction imposed by the United States Department of Transportation under 23 U.S.C~~  
20 ~~§ 158. The Legislature strongly objects to being forced to choose between loss of highway~~  
21 ~~construction funds, which are badly needed to construct priority road projects to promote the~~  
22 ~~public health and safety of the state's inhabitants and visitors, and loss of its right to set its own~~  
23 ~~drinking age. The action taken by this Legislature shall not be construed as a concession or~~  
24 ~~waiver of its constitutional right to establish at what age an individual may lawfully purchase,~~

1 possess, and consume alcoholic beverages. Rather, it is taken to ensure that South Dakota is not  
2 penalized while it challenges in the United States Supreme Court the federal government's  
3 attempt to usurp the state's right to regulate the drinking age of its citizens. This legislation is  
4 enacted with the expressed intent of providing the South Dakota attorney general the maximum  
5 flexibility to pursue South Dakota's challenge to the federal government's intrusion into a right  
6 reserved to the state while ensuring the full availability of federal highway funds for the 1988  
7 construction season. It is the intent of this Legislature that if at any time before or after the  
8 effective date of this legislation the provisions of 23 U.S.C § 158 are repealed, expired or  
9 declared invalid by the United States Supreme Court, the provisions of this legislation shall  
10 become null and void and any provision repealed by SL 1987, ch 261 shall be revived pursuant  
11 to § 2-14-19.

12 Section 6. That § 35-9-7 be amended to read as follows:

13 35-9-7. ~~If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a first~~  
14 ~~offense, the court shall, in addition to any other penalty allowed by law, order the suspension~~  
15 ~~of the person's driving privileges for a period not less than thirty days and not to exceed one~~  
16 ~~year. However, the court may issue an order permitting the person to operate a motor vehicle~~  
17 ~~for purposes of the person's employment or attendance at school or to court-ordered counseling~~  
18 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~  
19 ~~may also restrict the privilege in some other manner as the court may see fit for a period not to~~  
20 ~~exceed one year.~~

21 —If the conviction or adjudication for a violation of § 35-9-1.1 or 35-9-2 is for a second or  
22 subsequent offense, the court shall, in addition to any other penalty allowed by law, order the  
23 suspension of the person's driving privileges for a period ~~not less than sixty days~~ and not to  
24 exceed ~~one year~~ thirty days. However, the court may issue an order, upon proof of financial

1 responsibility pursuant to § 32-35-43.1, permitting the person to operate a ~~motor~~ vehicle for  
2 purposes of the person's employment ~~or~~, attendance at school, or to ~~court-ordered~~ attendance  
3 at counseling programs during the hours of the day and the days of the week set forth in the  
4 order. The court may also restrict the privilege in some other manner as the court may see fit for  
5 a period not to exceed one year.

6 Section 7. That § 35-9-8 be repealed.

7 ~~— 35-9-8. If the conviction or adjudication for a violation of § 35-9-1 is for a first offense, the~~  
8 ~~court shall, in addition to any other penalty allowed by law, order the revocation of the~~  
9 ~~defendant's driving privileges for a period not less than thirty days and not to exceed one year.~~

10 ~~However, the court may issue an order permitting the person to operate a motor vehicle for~~  
11 ~~purposes of the person's employment or attendance at school or to court-ordered counseling~~  
12 ~~programs during the hours of the day and the days of the week set forth in the order. The court~~  
13 ~~may also restrict the privilege in such manner as it sees fit for a period not to exceed one year.~~

14 ~~— If the conviction or adjudication for a violation of § 35-9-1 is for a second or subsequent~~  
15 ~~offense, the court shall, in addition to any other penalty allowed by law, order the revocation of~~  
16 ~~the defendant's driving privileges for a period not less than sixty days and not to exceed one~~  
17 ~~year.~~