

State of South Dakota

EIGHTY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2008

706P0170

HOUSE BILL NO. 1239

Introduced by: Representatives Gillespie, Ahlers, Bradford, Burg, Cutler, Dennert, Elliott, Engels, Feinstein, Gassman, Glenski, Halverson, Hargens, Krebs, Lucas, Lust, Miles, Nygaard, Peters, Sigdestad, Street, and Thompson and Senators Heidepriem, Albers, and Koetzle

1 FOR AN ACT ENTITLED, An Act to permit persons convicted of driving under the influence
2 to operate a vehicle for 24/7 sobriety testing and to declare an emergency.

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

4 Section 1. That § 32-23-2 be amended to read as follows:

5 32-23-2. If conviction for a violation of § 32-23-1 is for a first offense, such person is guilty
6 of a Class 1 misdemeanor, and the defendant's driving privileges shall be revoked for not less
7 than thirty days. However, the court may in its discretion issue an order upon proof of financial
8 responsibility, pursuant to § 32-35-113, permitting the person to operate a vehicle for purposes
9 of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling
10 programs. The court may also order the revocation of the defendant's driving privilege for a
11 further period not to exceed one year or restrict the privilege in such manner as it sees fit for a
12 period not to exceed one year.

13 Section 2. That § 32-23-3 be amended to read as follows:

14 32-23-3. If conviction for a violation of § 32-23-1 is for a second offense, such person is



1 guilty of a Class 1 misdemeanor, and the court shall, in pronouncing sentence, unconditionally
2 revoke the defendant's driving privilege for a period of not less than one year. However, upon
3 the successful completion of a court-approved chemical dependency program, and proof of
4 financial responsibility pursuant to § 32-35-113, the court may permit the person to drive for
5 the purposes of employment, 24/7 sobriety testing, attendance at school, or attendance at
6 counseling programs. If such person is convicted of driving without a license during that period,
7 the person shall be sentenced to the county jail for not less than three days, which sentence may
8 not be suspended.

9 Section 3. That § 32-23-4 be amended to read as follows:

10 32-23-4. If conviction for a violation of § 32-23-1 is for a third offense, the person is guilty
11 of a Class 6 felony, and the court, in pronouncing sentence, shall order that the driver's license
12 of any person so convicted be revoked for a period of not less than one year from the date
13 sentence is imposed or one year from the date of initial release from imprisonment, whichever
14 is later. In the event the person is returned to imprisonment prior to the completion of the period
15 of driver's license revocation, time spent imprisoned does not count toward fulfilling the period
16 of revocation. If the person is convicted of driving without a license during that period, he shall
17 be sentenced to the county jail for not less than ten days, which sentence may not be suspended.
18 Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions of the
19 license revocation for the term of such revocation. Upon the successful completion of a court-
20 approved chemical dependency counseling program, and proof of financial responsibility
21 pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes
22 of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling
23 programs.

24 Section 4. That § 32-23-4.6 be amended to read as follows:

1 32-23-4.6. If conviction for a violation of § 32-23-1 is for a fourth offense and the person
2 has previously been convicted of a felony under § 32-23-4, the person is guilty of a Class 5
3 felony, and the court, in pronouncing sentence, shall order that the driver's license of any person
4 so convicted be revoked for a period of not less than two years from the date sentence is
5 imposed or two years from the date of initial release from imprisonment, whichever is later. In
6 the event the person is returned to imprisonment prior to the completion of the period of driver's
7 license revocation, time spent imprisoned does not count toward fulfilling the period of
8 revocation. If the person is convicted of driving without a license during that period, the person
9 shall be sentenced to the county jail for not less than twenty days, which sentence may not be
10 suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the conditions
11 of the license revocation for the term of such revocation. Upon the successful completion of a
12 court- approved chemical dependency counseling program, and proof of financial responsibility
13 pursuant to § 32-35-113, the court may permit the person to operate a vehicle for the purposes
14 of employment, 24/7 sobriety testing, attendance at school, or attendance at counseling
15 programs.

16 Section 5. That § 32-23-4.7 be amended to read as follows:

17 32-23-4.7. If conviction for violation of § 32-23-1 is for a fifth offense, or subsequent
18 offenses thereafter, and the person has previously been convicted of a felony under § 32-23-4,
19 the person is guilty of a Class 4 felony and the court, in pronouncing sentencing, shall order that
20 the driver's license of any person so convicted be revoked for a period of not less than three
21 years from the date sentence is imposed or three years from the date of initial release from
22 imprisonment, whichever is later. In the event the person is returned to imprisonment prior to
23 the completion of the period of driver's license revocation, time spent imprisoned does not count
24 toward fulfilling the period of revocation. If the person is convicted of driving without a license

1 during that period, the person shall be sentenced to the county jail for not less than twenty days,
2 which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains
3 jurisdiction to modify the conditions of the license revocation for the term of such revocation.
4 Upon the successful completion of a court- approved chemical dependency counseling program,
5 and proof of financial responsibility pursuant to § 32-35-113, the court may permit the person
6 to operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at school,
7 or attendance at counseling programs.

8 Section 6. Whereas, this Act is necessary for the immediate preservation of the public peace,
9 health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and
10 effect from and after its passage and approval.