



2022 South Dakota Legislature

House Bill 1108

Introduced by: The Committee on Judiciary at the request of the Chief Justice

1 **An Act to revise provisions related to driving under the influence.**

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

3 **Section 1. That § 32-23-2 be AMENDED:**

4 **32-23-2.** If conviction for a violation of § 32-23-1 is for a first offense, ~~such~~ the
 5 person is guilty of a Class 1 misdemeanor, and the ~~defendant's driving privileges shall be~~
 6 ~~revoked~~ court shall revoke the person's driver license for not less than thirty days.
 7 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
 9 purposes of employment, 24/7 sobriety testing, attendance at school, child care delivery
 10 or pickup, or attendance at counseling programs. The court may also order the revocation
 11 of the ~~defendant's~~ person's driving privilege for a further period not to exceed one year or
 12 restrict the privilege in such manner as it sees fit for a period not to exceed one year.

13 **Section 2. That § 32-23-3 be AMENDED:**

14 **32-23-3.** If conviction for a violation of § 32-23-1 is for a second offense, ~~such~~
 15 the person is guilty of a Class 1 misdemeanor, and the court shall, in pronouncing
 16 sentence, ~~unconditionally~~ revoke the defendant's driving privilege person's driver license
 17 for a period of not less than one year. However, upon the successful completion of a court-
 18 approved chemical dependency program, and proof of financial responsibility pursuant to
 19 § 32-35-113, the court may permit the person to drive for the purposes of employment,
 20 24/7 sobriety testing, attendance at school, child care delivery or pickup, or attendance
 21 at counseling programs. If ~~such~~ the person is convicted of driving without a license during
 22 that period, the person shall be sentenced to the county jail for not less than three days,
 23 which sentence may not be suspended.

24 **Section 3. That § 32-23-4 be AMENDED:**

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

16 **Section 4. That § 32-23-4.6 be AMENDED:**

17 **32-23-4.6.** If conviction for a violation of § 32-23-1 is for a fourth offense, the
18 person is guilty of a Class 5 felony, and the court, in pronouncing sentence, shall ~~order~~
19 ~~that~~ revoke ~~the driver's license of any person so convicted be revoked~~ person's driver
20 license for a period of not less than two years from the date sentence is imposed or two
21 years from the date of initial release from imprisonment, whichever is later. If the person
22 is returned to imprisonment prior to the completion of the period of driver's license
23 revocation, time spent imprisoned does not count toward fulfilling the period of revocation.
24 If the person is convicted of driving without a license during that period, ~~the person~~ court
25 ~~shall be sentenced~~ sentence the person to the county jail for not less than twenty days,
26 which sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains
27 jurisdiction to modify the conditions of the license revocation for the term of such
28 revocation. Upon the successful completion of a court-approved chemical dependency
29 counseling program, and proof of financial responsibility pursuant to § 32-35-113, the
30 court may permit the person to operate a vehicle for the purposes of employment, 24/7
31 sobriety testing, attendance at school, child care delivery or pickup, or attendance at
32 counseling programs. Further, sentencing pursuant to this section includes the provisions
33 of § 23A-27-18.

1 **Section 5. That § 32-23-4.7 be AMENDED:**

2 **32-23-4.7.** If conviction for violation of § 32-23-1 is for a fifth offense, or
3 subsequent offenses thereafter, the person is guilty of a Class 4 felony and the court, in
4 pronouncing sentencing, shall ~~order that the driver's license of any person so convicted~~
5 ~~be revoked~~ revoke the person's driver license for a period of not less than three years
6 from the date sentence is imposed or three years from the date of initial release from
7 imprisonment, whichever is later. In the event the person is returned to imprisonment
8 prior to the completion of the period of driver's license revocation, time spent imprisoned
9 does not count toward fulfilling the period of revocation. If the person is convicted of
10 driving without a license during that period, ~~the person~~ court shall be sentenced sentence
11 the person to the county jail for not less than twenty days, which sentence may not be
12 suspended. Notwithstanding § 23A-27-19, the court retains jurisdiction to modify the
13 conditions of the license revocation for the term of such revocation. Upon the successful
14 completion of a court-approved chemical dependency counseling program, and proof of
15 financial responsibility pursuant to § 32-35-113, the court may permit the person to
16 operate a vehicle for the purposes of employment, 24/7 sobriety testing, attendance at
17 school, child care delivery or pickup, or attendance at counseling programs.

18 **Section 6. That § 32-23-4.9 be AMENDED:**

19 **32-23-4.9.** If a conviction for a violation of § 32-23-1 is for a sixth offense, or
20 subsequent offense, and the person had at least five convictions of § 32-23-1 occurring
21 within twenty-five years of the violation being charged, and at least two of those prior
22 convictions having occurred within ten years, the violation is an aggravated offense and
23 the person is guilty of a Class 4 felony.

24 The court, in pronouncing sentencing, shall ~~order that the driver license of any~~
25 ~~person so convicted be revoked~~ revoke the person's driver license for a period of not less
26 than three years from the date the sentence is imposed or three years from the date of
27 initial release from imprisonment, whichever is later. If the person is returned to
28 imprisonment prior to the completion of the period of driver license revocation, time spent
29 imprisoned does not count toward fulfilling the period of revocation. If the person is
30 convicted of driving without a license during that period, ~~the person~~ court shall be
31 ~~sentenced~~ sentence the person to the county jail for not less than twenty days, which
32 sentence may not be suspended. Notwithstanding § 23A-27-19, the court retains

1 jurisdiction to modify the conditions of the license revocation for the term of such
2 revocation.

3 Upon the person's successful completion of a court-approved chemical dependency
4 counseling program and proof of financial responsibility pursuant to § 32-35-113, the
5 court may permit the person to operate a vehicle for the purposes of employment, 24/7
6 sobriety testing, attendance at school, child care delivery or pickup, or attendance at
7 counseling programs.

8 For each person convicted under this section and placed on probation, parole, or
9 released from prison due to a suspended sentence, the person's supervision ~~shall~~ must
10 include at least one of the following: enrollment in an alcohol or drug accountability
11 program, an ignition interlock, a breath alcohol interlock, an alcohol monitoring bracelet,
12 or another enhanced monitoring tool. ~~Supervision of the offender shall be overseen by~~
13 ~~the~~ The Unified Judicial System shall oversee supervision of the offender if the sentence
14 does not include a term of imprisonment in the penitentiary ~~or by the~~ The Department of
15 Corrections shall oversee supervision of the offender if the sentence includes a term of
16 imprisonment in the penitentiary. Any offender supervised pursuant to this section is not
17 excluded from earned discharge credit as otherwise authorized by statute.

18 If, during the period of supervision imposed under this section, the person being
19 supervised violates conditions, ~~the offender shall~~ person must be penalized according to
20 the graduated sanctions policy to be established by the Supreme Court or the Department
21 of Corrections, respectively.