

Committee: House Judiciary

Wednesday, February 16, 2022 10:00 AM

Roll Call

Present: Rep. Aylward, Rep. Barthel, Rep. Cwach, Rep. Odenbach, Rep. Sue Peterson, Rep. Pischke, Rep. Pourier, Rep. Rehfeldt, Rep. Reimer, Rep. Soye, Rep. St. John, Rep. Stevens, and Rep. Hansen

OTHERS PRESENT: See Original Minutes

**The meeting was called to order by Representative Hansen**

**MOTION: TO APPROVE THE MINUTES OF MONDAY, FEBRUARY 14<sup>TH</sup>**

Moved by: Stevens  
Second by: Pischke  
Action: Prevailed by voice vote

**HB 1287 : revise certain provisions regarding the crime of rape and provide a penalty therefor.**

Presented by: Representative Tim Reed, District 7

Proponents: Dan Nelson, self, Brookings  
Dianna Miller, South Dakota Network Against Family Violence, Sioux Falls  
Terra Larson, SD Association of Criminal Defense Lawyers, Pierre  
Grant M. Flynn, South Dakota State's Attorneys Association, Pierre

Opponents: Lori Martinec, South Dakota Police Chiefs Association, Fort Pierre

**MOTION: DO PASS HB 1287**

Moved by: Barthel  
Second by: Pourier  
Action: Prevailed by Majority Members Elect (13-0-0-0)

Voting Yes: Aylward, Barthel, Cwach, Odenbach, Sue Peterson, Pischke, Pourier, Rehfeldt, Reimer, Soye, St. John, Stevens, and Hansen

**HB 1008 : provide a cause of action for certain employees that are required to receive a vaccination as a condition of employment and to declare an emergency.**

Presented by: Representative Fred Deutsch, District 4

Opponents: Nathan Sanderson, South Dakota Retailers Association, Pierre  
Justin G. Smith, Sioux Falls Chamber, Sioux Falls  
David Owen, South Dakota Chamber of Commerce & Industry, Pierre  
Mike Chrysler, Independent Insurance Agents of South Dakota, Fort Pierre  
Doug Abraham, South Dakota Association of Specialty Care Providers, Rapid City  
Deb Mortenson, Associated General Contractors of South Dakota, Pierre;  
SD Optometric Society, Pierre  
Jasper Diegel, SD Hotel & Lodging Association, Pierre  
Justin Bell, South Dakota State Medical Association, Sioux Falls  
Madeline Miller, Avera McKennan, Sioux Falls

Stephanie Rissler, South Dakota Association of Healthcare Organizations,  
Sioux Falls  
Terry Dosch, South Dakota Council of Community Behavioral Health, Pierre  
Dan Cross, Community Support Providers of South Dakota, Spearfish

**MOTION: AMEND HB 1008**

1008B

On page 1, line 2, of the Introduced bill, after "employment" delete " and to declare an emergency"  
On page 1, line 5, of the Introduced bill, after "claim" insert ", within two years after the claim accrues,"

On page 1, line 6, of the Introduced bill, after "a " insert "COVID-19 "

On page 1, line 6, of the Introduced bill, after "vaccination" insert the comma

On page 1, line 7, of the Introduced bill, after "a " insert "COVID-19 "

On page 1, line 8, of the Introduced bill, after "employment" insert " and did not provide a vaccination exemption upon request as required by law"

On page 1, line 9, of the Introduced bill, after "employment." delete "No employer may invoke any limitation of liability or damages, or immunity, authorized by state law, when subject to a claim under this section.

"

On page 1, line 14, of the Introduced bill, after "thereof." delete "Section 2. Whereas, this Act is necessary for the immediate preservation of the public peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full force and effect from and after its passage and approval."

Moved by: Pischke

Second by: Aylward

Action: Prevailed by voice vote

**MOTION: DEFER HB 1008 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Rehfeldt

Second by: Barthel

Action: Prevailed by Majority Members Elect (7-6-0-0)

Voting Yes: Barthel, Cwach, Pourier, Rehfeldt, Reimer, St. John, and Stevens

Voting No: Aylward, Odenbach, Sue Peterson, Pischke, Soye, and Hansen

**HB 1199 : remove irreconcilable differences as a cause for divorce.**

Presented by: Representative Tony Randolph, District 35

Proponents: Norman Woods, Family Heritage Alliance Action, Rapid City

Opponents: Andrew L. Fergel, State Bar of South Dakota, Pierre  
Steve Siegel, South Dakota Trial Lawyers Association, Sioux Falls  
Linda Lea M. Viken, self, Rapid City

**MOTION: DEFER HB 1199 TO THE 41<sup>ST</sup> LEGISLATIVE DAY**

Moved by: Stevens

Second by: Barthel

Action: Prevailed by Majority Members Elect (7-6-0-0)

Voting Yes: Barthel, Cwach, Odenbach, Pourier, Rehfeldt, Reimer, and Stevens

Voting No: Aylward, Sue Peterson, Pischke, Soye, St. John, and Hansen

**HB 1289 : update provisions regarding self-service storage.**

Presented by: Representative Richard Thomason, District 13

Proponents: T.J. Nelson, Self Storage Association, Alexandria  
Andrew Johnson, self, BrookingsOpponents: David Bordewyk, South Dakota Newspaper Association, Brookings  
(Handout(s) 1)  
Justin G. Smith, South Dakota Newspaper Association, Brookings**MOTION: AMEND HB 1289**

1289A

On page 4, line 10, of the Introduced bill, remove the overstrikes from ", but subject to the rights of any prior lienholder unless the personal property is consumer goods as defined in"

On page 4, line 12, of the Introduced bill, after "§ 57A-9-109(1)" insert " § 57A-9-102"

On page 4, line 12, of the Introduced bill, remove the overstrikes from the comma

On page 4, line 19, of the Introduced bill, delete " two" and insert " three"

On page 4, line 21, of the Introduced bill, delete " Must" and insert " must"

On page 4, line 21, of the Introduced bill, after "remitted" delete " to the unclaimed refund amount"

On page 4, line 29, of the Introduced bill, after "discretion" insert ";

(13) If the personal property subject to a lien under § 44-14-2 is a titled motor vehicle, boat, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the personal property is considered abandoned. The owner shall dispose of the personal property using the process prescribed in §§ 32-36-8 to 32-36-11, inclusive. The Department of Revenue shall provide the owner with the last known address of the record holder of title and any readily identifiable lien holders free of charge. An owner may not be held liable for damage incurred to an occupant's motor vehicle, boat, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility."

On page 5, line 14, of the Introduced bill, after "property." delete "Section 8. That chapter 44-14 be amended with a NEW SECTION:

"

On page 5, line 15, of the Introduced bill, after "SECTION:" delete "If the personal property subject to a lien under § 44-14-2 is a motor vehicle, watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from the self-service storage facility. An owner may not be held liable for damage incurred to an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility."

On page 5, line 22, of the Introduced bill, delete "9" and insert 8

On page 5, line 27, of the Introduced bill, delete " 10" and insert 9

Moved by: Rehfeldt

Second by: Reimer

Action: Prevailed by voice vote

**MOTION: AMEND HB 1289**

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On page 4, line 12, of the Introduced bill, after "§ 57A-9-109(1)" insert " § 57A-9-102"

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On page 4, line 21, of the Introduced bill, after "remitted" delete " to the unclaimed refund amount"

On page 4, line 29, of the Introduced bill, after "discretion" insert ";

(13) If the personal property subject to a lien under § 44-14-2 is a titled motor vehicle, boat, trailer, snowmobile, or off-road vehicle, and rent or other charges under the rental agreement remain unpaid for sixty days, the personal property is considered abandoned. The owner shall dispose of the personal property using the process prescribed in §§ 32-36-8 to 32-36-11, inclusive. The Department of Revenue shall provide the owner with the last known address of the record holder of title and any readily identifiable lien holders free of charge. An owner may not be held liable for damage incurred to an occupant's motor vehicle, boat, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility"

On page 5, line 5, of the Introduced bill, after "property." delete "Section 6. That chapter 44-14 be amended with a NEW SECTION:

"

On page 5, line 6, of the Introduced bill, after "SECTION:" delete "The owner may charge a late fee of twenty dollars or twenty percent of a delinquent monthly rent payment due under the rental agreement, whichever is greater, for each delinquent payment of rent, fees, or other charges due under the rental agreement."

On page 5, line 14, of the Introduced bill, after "property." delete "Section 8. That chapter 44-14 be amended with a NEW SECTION:

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On page 5, line 15, of the Introduced bill, after "SECTION:" delete "If the personal property subject to a lien under § 44-14-2 is a motor vehicle, watercraft, or trailer, and rent or other charges under the rental agreement remain unpaid for sixty days, the owner may have the motor vehicle, watercraft, or trailer towed from the self-service storage facility. An owner may not be held liable for damage incurred to an occupant's motor vehicle, watercraft, or trailer after the owner relinquishes possession of the personal property and the personal property is removed from the self-service storage facility."

Moved by: Cwach

Second by: Pourier

Action: Prevailed by voice vote

**MOTION: DO PASS HB 1289 AS AMENDED**

Moved by: Stevens

Second by: Cwach

Action: Prevailed by Majority Members Elect (9-4-0-0)

Voting Yes: Aylward, Barthel, Cwach, Pourier, Rehfeldt, Reimer, St. John, Stevens, and Hansen

Voting No: Odenbach, Sue Peterson, Pischke, and Soye

**HB 1328 : require law enforcement to report certain seizures of property.**

Presented by: Representative Aaron Aylward, District 6

Proponents: Kathy Sanchez, Institute for Justice, Arlington, VA (Handout(s) 2)

Lisa Nolen, Americans For Prosperity, Sioux Falls

Terra Larson, SD Association of Criminal Defense Lawyers, Pierre

Opponents: Charles McGuigan, Office of the Attorney General

Rick Miller, Department of Public Safety

**MOTION: AMEND HB 1328**

1328A

On page 1, line 3, of the Introduced bill, after "Dakota:" delete "Section 1. An Act to require law enforcement to report certain seizures of property."

On page 1, line 5, of the Introduced bill, after "SECTION:" insert "For any property seized or forfeited under this chapter, a law enforcement agency shall issue a report to the attorney general within a time specified and in a form prescribed by the attorney general, containing information about the property seized or forfeited as listed in section 2 of this Act and in rule promulgated by the attorney general. A law enforcement agency shall make a null report if it did not engage in seizures or forfeitures under this chapter during the fiscal year."

On page 1, line 6, of the Introduced bill, after "SECTION:" insert "The attorney general shall establish and maintain a searchable public website or electronic spreadsheet that includes the following information about each property seized and forfeited:

- (1) Name of the law enforcement agency that seized the property or, if seized by a multijurisdictional state task force, the name of the lead state agency;
- (2) Forfeiture case file number;
- (3) County;
- (4) Arresting agency;
- (5) Seizure date;
- (6) Location of the seizure, whether a residence, business, event, or traffic stop;
- (7) If a traffic stop on an interstate or state highway, the direction of the traffic flow, whether eastbound, westbound, southbound or northbound;
- (8) Type and amount of controlled substance;
- (9) Original criminal charge;
- (10) Final criminal charge;
- (11) Date of summons and complaint filed;
- (12) Date of summons and complaint served or last date of publication;
- (13) Whether the defendant or property owner defaulted on the forfeiture complaint, and if no default occurred, the date of civil answer filed by the defendant or property owner;
- (15) Whether an innocent-owner claimant or creditor moved to regain the property;
- (16) Date of default civil judgment;
- (17) Date of summary judgment;
- (18) Date of civil dismissal;
- (19) Date of order of civil forfeiture;
- (20) Dollar amount of seized currency;
- (21) Description of seized property, other than currency, including make, model, and year;
- (22) Estimated value of seized property other than currency;
- (23) Date of case completion;
- (24) Dollar amount of forfeited currency after case completion;
- (25) Description of forfeited property, other than currency, after case completion;
- (26) Estimated value of forfeited property, other than currency, after case completion;
- (27) Whether the property was returned to the defendant or property owner, returned to the innocent-owner claimant or creditor, bought back, sold, destroyed, retained or disbursed to law enforcement agency, or pending disposition; and
- (28) Case comments."

On page 1, line 7, of the Introduced bill, after "SECTION:" insert "The attorney general, no more than 120 days after the close of the fiscal year, shall post on a searchable public website and submit a report to the speaker of the House of Representatives, president pro tempore of the Senate, and Governor, containing an itemized list of each property seized and forfeited for the preceding fiscal year as provided in section 2 of this Act.

The attorney general shall include in the report an itemized list of the expenditures and disbursements made by the attorney general under §§ 23A-49-20 and 34-20B-64.

The attorney general may include in the report recommendations to improve statutes, rules, and policies to better ensure that seizure, forfeiture, and expenditures are done and reported in a manner that is fair to crime victims, innocent property owners, secured interest holders, citizens, law enforcement and taxpayers.

The data and report compiled hereunder are public records under chapter 1-27."

On page 1, line 8, of the Introduced bill, after "SECTION:" insert "If a law enforcement agency fails to file information within thirty days after the due date specified by the attorney general and there is no good cause as determined by the attorney general, the attorney general shall impose on the agency a civil fine payable to the general fund of five

hundred dollars or the equivalent of one-quarter of the forfeiture proceeds received by the agency, whichever is greater."

On page 1, line 9, of the Introduced bill, after "SECTION:" insert "At the request of an elected official of the jurisdiction whose law enforcement agency seized or obtained forfeiture of the property, the state auditor shall perform an audit under generally accepted government auditing standards of records submitted to the attorney general related to inventory of seized property. A copy of the final audit report must be submitted to the attorney general no later than ninety days after the end of the fiscal year and made public."

On page 1, line 10, of the Introduced bill, after "SECTION:" insert "The attorney general may recoup its costs under this Act by charging a fee to the law enforcement agency filing a report. The fee must be deposited in the general fund.

The law enforcement agency may use forfeiture proceeds to pay the costs of compiling and reporting data under this Act, and to pay any fees imposed by the attorney general under this Act."

On page 1, line 11, of the Introduced bill, after "SECTION:" insert "The attorney general shall promulgate rules, in accordance with chapter 1-26 establishing:

- (1) The fee for law enforcement agencies filing a report with the attorney general, not to exceed thirty dollars;
- (2) The form for law enforcement agencies to file a report with the attorney general;
- (3) The deadline by which law enforcement must report under section 1 of this Act;
- (4) Procedures necessary to facilitate the reporting provisions under this Act; and
- (5) Any information required from law enforcement agencies about property seized and forfeited under this chapter, in addition to the information required to be reported to the attorney general in section 2 of this Act."

On page 1, line 11, of the Introduced bill, after "8. " insert "This Act applies to any property seized or forfeited under this chapter on or after July 1, 2022."

Moved by: Pischke  
 Second by: Soye  
 Action: Prevailed by voice vote

**MOTION: DO PASS HB 1328 AS AMENDED**

Moved by: Soye  
 Second by: Aylward  
 Action: Prevailed by Majority Members Elect (11-2-0-0)

Voting Yes: Aylward, Cwach, Odenbach, Sue Peterson, Pischke, Pourier, Rehfeldt, Reimer, Soye, St. John, and Hansen

Voting No: Barthel and Stevens

**MOTION: ADJOURN**

Moved by: Rehfeldt  
 Second by: Cwach  
 Action: Prevailed by voice vote

Kaitlyn Baucom, Committee Secretary

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 /s/ JON HANSEN  
 Jon Hansen, Chair