AN ACT

ENTITLED, An Act to make use of hand-held mobile telephones while driving a commercial motor vehicle a serious traffic violation and to update certain references to federal regulations regarding the issuance of commercial driver licenses.

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

Section 1. That § 32-12A-1 be amended to read as follows:

32-12A-1. Terms used in this chapter mean:

(1) "Alcohol," any substance containing any form of alcohol;

(2) "Commercial driver license," or "CDL," a license issued in accordance with the requirements of this chapter to an individual that authorizes the individual to drive a class of commercial motor vehicle;

(3) "Commercial driver license information system," or "CDLIS," the information system established pursuant to the Commercial Motor Vehicle Safety Act (CMVSA) to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers;

(4) "Commercial driver instruction permit," a permit issued pursuant to § 32-12A-12;

(5) "Commercial motor vehicle," a motor vehicle designed or used to transport passengers or property:

(a) If the vehicle has a gross combination weight rating of twenty-six thousand one pounds or more and the towed unit has a gross vehicle weight rating of more than ten thousand pounds;

(b) If the vehicle has a gross vehicle weight rating of twenty-six thousand one or more pounds;

(c) If the vehicle is designed to transport sixteen or more passengers, including the

driver; or

(d) If the vehicle is of any size and is used in the transportation of hazardous materials and is required to be placarded in accordance with 49 C.F.R. Part 172, Subpart F, as amended through January 1, 2014;

(6) "Controlled substance," any substance so classified under section 102(6) of the Controlled Substances Act (21 U.S.C. § 802(6)), and includes all substances listed on Schedules I through V, of 21 C.F.R. Part 1308, inclusive, as amended through January 1, 2014;

(7) "Conviction," an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated;

(8) "Department," the Department of Public Safety;

(9) "Disqualification," any of the following actions:

(a) The suspension, revocation, or cancellation of a CDL by the state or jurisdiction of issuance;

(b) Any withdrawal of a person's privileges to drive a commercial motor vehicle by a state or other jurisdiction as the result of a violation of state or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations); or

(c) A determination by the Federal Motor Carrier Safety Administration that a person is not qualified to operate a commercial motor vehicle;

(10) "Domicile," the state where a person has that person's true, fixed, and permanent home

and principal residence and to which that person has the intention of returning whenever that person is absent;

(11) "Drive," to drive, operate, or be in actual physical control of a motor vehicle;

(12) "Driver," any person who drives, operates, or is in actual physical control of a commercial motor vehicle, or who is required to hold a commercial driver license;

(13) "Employer," any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle;

(14) "Endorsement," an authorization to a person's CDL required to permit the person to operate certain types of commercial motor vehicles;

(15) "Fatality," the death of a person as the result of a motor vehicle accident;

(16) "Felony," any offense under state or federal law that is punishable by death or imprisonment for a term exceeding one year;

(17) "Foreign jurisdiction," any jurisdiction other than a state of the United States;

(18) "Gross combination weight rating" or "GCWR," the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, GCWR shall be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon;

(19) "Gross vehicle weight rating," or "GVWR," the value specified by the manufacturer as the loaded weight of a single vehicle;

(20) "Hazardous materials," any material that has been designated as hazardous under 49 U.S.C. 5103 as amended through January 1, 2014, and is required to be placarded under subpart F of 49 C.F.R. part 172 or any quantity of a material listed as a select agent or toxin in 42 C.F.R. part 73, as amended through January 1, 2014;

(21) "Imminent hazard," the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment;

(22) "Medical variance," the receipt of one of the following that allows a driver to be issued a medical certificate:

(a) An exemption letter permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. part 381 or 49 C.F.R. part 391, as amended through January 1, 2014; or

(b) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to 49 C.F.R. part 391, as amended through January 1, 2014;

(23) "Motor vehicle," a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power, used on highways, but does not include any vehicle, machine, tractor, trailer, or semitrailer operated exclusively on a rail;

(24) "Noncommercial motor vehicle," a motor vehicle or combination of motor vehicles not defined as a commercial motor vehicle;

(25) "Nonresident CDL," a commercial driver license issued by a state to a person who resides in a foreign jurisdiction or a person domiciled in another state that is prohibited from issuing commercial driver licenses by the Federal Motor Carrier Safety Administration;

(26) "Notice of final administrative decision," a determination rendered by an agency of competent jurisdiction when all avenues of appeal have been exhausted or time to appeal has elapsed;

(27) "Operator's license," any license issued by a state to a person which authorizes the person

full privileges to drive a motor vehicle;

(28) "Out-of-service order," an out-of-service order as defined by 49 C.F.R. part 390.5, as of January 1, 2014;

(29) "Recreational vehicle," a vehicle which is self-propelled or permanently towable by a light duty truck and designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use;

(30) "School bus," any motor vehicle that is used to transport sixteen or more passengers, including the driver, and is used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier;

(31) "Serious traffic violation," a conviction of:

(a) Excessive speeding, involving a single charge of any speed fifteen miles per hour or more, above the posted speed limit, in violation of chapter 32-25;

(b) Reckless driving, in violation of § 32-24-1;

(c) Careless driving, in violation of § 32-24-8;

(d) Improper or erratic traffic lane changes, in violation of § 32-26-6;

(e) Following the vehicle ahead too closely, in violation of § 32-26-40;

(f) A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;

(g) Failure to stop or yield, in violation of §§ 32-29-2.1, 32-29-2.2, 32-29-3, and 32-29-4;

(h) Failure to stop or slow vehicle for a school bus, in violation of § 32-32-6;

(i) Eluding a police vehicle, in violation of § 32-33-18;

(j) Overtaking or passing another vehicle, in violation of §§ 32-26-26, 32-26-27, 32-

26-28, 32-26-34, 32-26-35, 32-26-36, and 32-26-37;

(k) Driving a commercial motor vehicle without obtaining a commercial driver license, in violation of § 32-12A-6;

(l) Driving a commercial motor vehicle without a commercial driver license in the driver's possession in violation of § 32-12A-6. Any person who provides proof to the court or to the enforcement authority that issued the citation, by the date the person was required to appear in court or to pay a fine for the violation, that the person held a valid commercial driver license on the date the citation was issued, is not guilty of a serious traffic violation;

(m) Driving a commercial motor vehicle without the proper class of commercial driver license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported in violation of § 32-12A-6; or

(n) Violating a federal, state, or local law or rule prohibiting texting while driving;

(o) Utilizing a hand-held mobile telephone while driving a commercial vehicle;

(32) "State," a state of the United States and the District of Columbia;

(33) "United States," the fifty states and the District of Columbia.

Section 2. That § 32-12A-34 be amended to read as follows:

32-12A-34. The Department of Public Safety shall suspend, revoke, or disqualify the commercial driver license or driving privilege of a resident of this state upon receiving notice of the conviction or final administrative decision from another state for an infraction which would provide grounds for suspension, revocation, or disqualification of the license or driving privilege in this state. The commercial license of a driver of a commercial motor vehicle convicted of violating a federal, state, or local law or rule prohibiting texting or the use of a hand-held mobile telephone may be

disqualified as set forth in subsections 32-12A-1(31)(n) and (o), and §§ 32-12A-40 and 32-12A-41.

An Act to make use of hand-held mobile telephones while driving a commercial motor vehicle a serious traffic violation and to update certain references to federal regulations regarding the issuance of commercial driver licenses.

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I certify that the attached Act originated in the

SENATE as Bill No. 13

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Secretary of the Senate

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President of the Senate

Attest:

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Secretary of the Senate

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Speaker of the House

Attest:

_____
Chief Clerk

Senate Bill No. 13
File No. ____
Chapter No. _____

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Received at this Executive Office this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby approved this _____ day of _____ , A.D., 20___

_____
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____ , 20___
at _____ o'clock __ M.

_____
Secretary of State

By _____
Asst. Secretary of State