



2020 South Dakota Legislature

House Bill 1066

*Introduced by: **Representative** David Johnson*

1 **An Act to revise and repeal provisions regarding aviation.**

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

3 **Section 1.** That a NEW SECTION be added:

4 **9-24-7. Maximum liability--Municipal airport--Accidents or occurrences.**

5 The maximum liability of any municipality operating an airport shall be five million
 6 dollars for any accident or occurrence at or in connection with the operation of the airport
 7 resulting in bodily injury or death to any person, or damage to property, or any
 8 combination thereof.

9 **Section 2.** That § 50-1-1 be AMENDED:

10 **50-1-1. Definitions.**

11 Terms as used in this title mean:

- 12 (1) ~~"Aeronautics," the science, art, and physics of flight. The term also means the~~
 13 ~~method or act of construction, repair, or maintenance of airports, airport facilities,~~
 14 ~~aircraft, and aviation facilities;~~
- 15 (2)—"Air traffic control," a service operated by an authority under Federal Aviation
 16 Administration oversight to promote the safe, orderly, and expeditious flow of air
 17 traffic in the United States;
- 18 ~~(3)~~(2) "Aircraft," a device that is used, intended to be used, or designed for flight in the
 19 air. The term includes any airplane, balloon, ~~civil aircraft,~~ drone, glider, and
 20 helicopter, ~~and public aircraft;~~
- 21 ~~(4)~~(3) "Aircraft dealer," any person, manufacturer, or distributor engaged in the business
 22 of buying, selling, exchanging, or acting as a broker for three or more aircraft in
 23 any twelve consecutive months, other than a business liquidation of used aircraft;
- 24 ~~(5)~~(4) "Airport," any area of land or water used, or intended to be used, for landing and
 25 take-off of aircraft, and any appurtenant area, structure, facility, or right of way to

Catchlines are not law. (§ 2-16-13.1)

Underscores indicate new language.
~~Overstriked~~ indicate deleted language.

- 1 facilitate that use. ~~The term includes any military airport, private airport, public~~
2 ~~airport, and temporary airport;~~
- 3 ~~(6)~~(5) "Airport authority," any regional airport authority a government entity created
4 under this chapter for the purpose of acquiring, establishing, contracting,
5 maintaining, improving and operating airports and other navigation facilities;
- 6 ~~(7)~~(6) "Airport facility," any property, structure, mechanism, machinery, light, beacon,
7 marker, communicating system, or other instrumentality equipment or device used
8 as an aid to the safe taking off and landing of aircraft, or the safe and efficient
9 operation or maintenance of an airport, and which is not owned or operated by the
10 federal government;
- 11 ~~(8)~~(7) "Airport hazard," any existing or potential condition that can endanger the life or
12 property of a user of an airport or any occupant of land in the vicinity of an airport,
13 and which can lead to damage to or loss of airport system equipment or property
14 or the environment;
- 15 ~~(9)~~ "Airport obstruction," ~~any structure or obstacle, or use of land, that obstructs an~~
16 ~~aerial approach of an airport or is otherwise hazardous to the use of an airport by~~
17 ~~aircraft for landing or taking off;~~
- 18 ~~(10)~~(8) "Airport sponsor," a public agency, private owner, state entity, or other
19 political subdivision that is associated with a public use airport facility and is a
20 recipient of any federal airport improvement grant;
- 21 ~~(11)~~(9) "Anemometer tower," a structure, including any guy wire or accessory facility,
22 on which an anemometer is mounted;
- 23 ~~(12)~~(10) "Aviation facility," any ~~airport~~ facility that supports aviation activities,
24 including any airport, heliport, and navigational aid;
- 25 ~~(13)~~(11) "Balloon," an aircraft that is not engine-driven, is lighter than air, and
26 sustains flight through the use of gas buoyancy or an airborne heater;
- 27 ~~(14)~~ "Civil aircraft," ~~any aircraft other than a public aircraft;~~
- 28 ~~(15)~~(12) "Commercial purpose," an aviation activity for profit that includes flight
29 instruction, charter, air taxi, or rental, but does not include the substitution of a
30 commercial use stamp for regular aircraft registration for the promotion of a
31 business or other purpose that does not involve aviation;
- 32 ~~(16)~~(13) "Commission," the South Dakota Aeronautics Commission;
- 33 ~~(17)~~(14) "Controlled airspace," any airspace of specific and defined classifications and
34 dimensions inside of which air traffic control services are provided;
- 35 ~~(18)~~(15) "Department," the Department of Transportation;

- 1 ~~(19)~~(16) "Drone," ~~a small an unmanned aircraft system (UA);~~
- 2 ~~(20)~~(17) "Heliport," an area of land, water, or a structural surface, used or intended
- 3 for use as a landing and take-off area for helicopters. ~~The term includes both public~~
- 4 ~~and private heliports;~~
- 5 ~~(21)~~(18) "Military airport," any military air base, air station, airfield, or other area,
- 6 publicly or privately owned, that is designed, set aside, and operated by the state,
- 7 a political subdivision of the state, or the United States, for civil or national defense,
- 8 or for any federal program relating to flight, or for the operation of military aircraft,
- 9 and used in the interest of the public for those purposes;
- 10 ~~(22)~~(19) "Navigational aid," ~~any device an aviation facility which is~~ external to an
- 11 aircraft specifically intended to assist a pilot in determining the aircraft's position
- 12 and safe course;
- 13 (20) "Obstruction," any structure or obstacle, or use of land, that obstructs an aerial
- 14 approach of an airport or is otherwise hazardous to the use of an airport by aircraft
- 15 for landing or taking off;
- 16 ~~(23)~~(21) "Place of business," a permanent enclosed structure at which a permanent
- 17 business of bartering, trading, or selling aircraft is carried out in good faith. The
- 18 term does not include any residence, tent, stand, or any other temporary structure;
- 19 ~~(24)~~(22) "Prescribed adjusted height," a height adjusted upward seventeen feet for an
- 20 interstate highway, fifteen feet for any other public road, ten feet or the height of
- 21 the highest mobile object that would normally traverse the road, whichever is
- 22 greater, for a private road, and twenty-three feet for a railroad;
- 23 ~~(25)~~(23) "Private airport," any ~~privately owned~~ privately-owned airport that is
- 24 available for use only by the owner and the owner's invitees;
- 25 ~~(26)~~ "Project," ~~any airport operated by an authority, including any real and personal~~
- 26 ~~property, structure, machinery, equipment, or appurtenance or facility that is part~~
- 27 ~~of the airport or used in connection with the airport either as a ground facility for~~
- 28 ~~the convenience of handling aviation equipment, passengers, or freight, or as part~~
- 29 ~~of any aviation or air safety operation;~~
- 30 ~~(27)~~ "Public aircraft," ~~any aircraft, including military aircraft, used exclusively in the~~
- 31 ~~governmental service of any state or territory of the United States;~~
- 32 ~~(28)~~(24) "Public airport," any airport, whether publicly or privately owned, that is
- 33 available to the public for aviation activity use by the public;

1 (25) "Small unmanned aircraft," a UA that weighs not more than fifty-five pounds,
 2 (twenty-five kilograms) including everything that is onboard or otherwise attached
 3 to the aircraft;

4 ~~(29)~~(26) "Small unmanned aircraft system" or "sUAS," any small unmanned aircraft
 5 and its associated elements that is operated without the possibility of direct human
 6 intervention from within or on the aircraft, and that weighs not more than fifty-five
 7 pounds, including anything that is onboard or otherwise attached to the aircraft
 8 including communication links and the components that control the UA that are
 9 required for the safe and efficient operation of the UA;

10 ~~(30)~~(27) "Temporary airport," any airport established and set aside for the operation
 11 of aircraft for transitory or impermanent purposes;

12 (28) "Unmanned aircraft" or "UA," an aircraft operated without the possibility of direct
 13 human intervention from within or on the aircraft.

14 **Section 3.** That § 50-2-12 be AMENDED:

15 **50-2-12. Expenditures and disbursements--Approval--Purposes.**

16 The commission shall approve the expenditure and disbursement of grants or funds
 17 appropriated and available for matching purposes, and for the planning, construction,
 18 development, operation, and maintenance of airport facilities. The commission may also
 19 approve expenditures from the state aviation fund to support the advancement of aviation
 20 and aviation commerce within the state.

21 **Section 4.** That a NEW SECTION be added:

22 **50-2-32. Commission action--Appeal.**

23 A person may appeal an action of the commission in accordance with chapter 1-
 24 26.

25 **Section 5.** That § 50-4-12 be AMENDED:

26 **50-4-12. Sale of aircraft fuel--Report--Violation as misdemeanor.**

27 Each person engaged in selling aircraft fuel to retailers or consumers at wholesale,
 28 shall, on or before the fifteenth day of each month, file a sworn statement and report with
 29 the department, upon forms ~~prescribed and provided by the commission~~ provided by the
 30 department, showing the number of gallons of aircraft fuel sold in South Dakota for use
 31 in aircraft. Any person failing to file such report is guilty of a Class 2 misdemeanor.

1 **Section 6.** That § 50-4-13 be AMENDED:

2 **50-4-13. Aircraft fuel tax revenues--Appropriation and use.**

3 ~~All of the~~The aircraft fuel tax collected on aircraft fuel purchased, imported,
 4 received, or distributed for subsequent sale for use in aircraft shall be appropriated and
 5 used as provided in § 50-4-14.

6 **Section 7.** That § 50-7-2 be AMENDED:

7 **50-7-2. County commissioners and municipalities--Airports--Powers and**
 8 **jurisdiction--Airport boards.**

9 The board of county commissioners of any county in this state may acquire,
 10 establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate
 11 airports for the use of aircraft within the limits of the county, and may use for any such
 12 purpose any real property suitable therefor owned or controlled by the county. Each
 13 municipality has the same power and jurisdiction except that a municipality may exercise
 14 the power either within or without the corporate limits of the municipality. ~~Any municipality~~
 15 ~~situated at or near the boundary line of an adjoining state may exercise the power and~~
 16 ~~jurisdiction over real property and persons, for such purposes in the adjoining state and~~
 17 ~~may maintain actions in the corporate name in the courts of the adjoining state for the~~
 18 ~~exercise or protection of any rights authorized by this chapter.~~ The governing boards of a
 19 county or a municipality may ~~by resolution~~ create an airport board by resolution.

20 **Section 8.** That § 50-7-7 be AMENDED:

21 **50-7-7. Statement of intention to establish airport--Protest by voters--**
 22 **Submission to vote.**

23 If the question of establishing a county airport has not previously been approved
 24 by a majority vote of the voters at an election at which the question was submitted, then
 25 any county desiring to establish and construct an airport shall state in the next published
 26 report of the county's proceedings the county's intention to establish and construct the
 27 airport stating the maximum amount which might be required to do so. If within sixty
 28 days from the publication a protest signed by fifteen percent of the voters of the county
 29 voting ~~for Governor~~ at the last general election for Governor be filed with the county
 30 commissioners, then no action may be taken until the question has been submitted to a
 31 vote of the people and sixty percent of those voting shall vote in favor thereof. The

1 question to be so submitted shall be, "Shall the county expend an amount not to exceed
2 \$_____ to establish and construct an airport?"

3 **Section 9.** That § 50-7-10 be AMENDED:

4 **50-7-10. Airport sponsors--Powers--Federal grants--Agreements.**

5 The airport sponsor ~~shall~~may designate the department as the airport sponsor's
6 agent to accept, receive, and receipt for federal grants in the body's behalf for airport
7 purposes, and to contract for the planning, construction, and maintenance of aviation
8 facilities. The airport sponsor may enter into an agreement with the department
9 prescribing the terms and conditions of the agency under this section. The federal grants
10 shall be paid to the airport sponsor under the terms and conditions imposed by the United
11 States government in making the grant.

12 **Section 10.** That § 50-7-15 be AMENDED:

13 **50-7-15. Cooperative agreements--Airport improvements--Reimbursement.**

14 The department, on behalf of the commission, may enter into cooperative
15 agreements with the governing body of a governmental agency, whereby, the initial
16 expenditures for making authorized airport improvements may be paid from any state
17 aeronautics fund moneys that may be available to the commission and the governmental
18 agency's share of the expenditure may be reimbursed to the commission over a period of
19 three years. The reimbursements shall be paid into the ~~special aviation internal service~~
20 ~~fund created by § 50-2-16~~ state aeronautics fund and used for airport improvement
21 purposes, ~~or shall be paid into the specific fund used to make the initial expenditures.~~ Any
22 governmental agency may enter into a cooperative financing agreement upon the
23 adoption of a resolution authorizing the governing body to enter into the agreement.

24 **Section 11.** That § 50-7-17 be AMENDED:

25 **50-7-17. Airport system expansion and improvement--Project applications--
26 Prior approval--Federal funds--Requirements.**

27 No governmental agency in this state, whether acting alone or jointly with another
28 governmental agency, may submit to the ~~administrator of the federal aviation~~
29 ~~administration~~ Federal Aviation Administration any project application under the
30 provisions of any act of Congress which provides airport planning, construction, and
31 development funds or other funds for the expansion and improvement of the airport

1 system as ~~such~~the act shall pertain to the State of South Dakota, unless the project
2 application has been first approved by the department. No governmental agency may
3 directly receive or disburse any funds granted by the United States under ~~such~~the act,
4 but the governmental agency shall designate the department as its agent to receive and
5 disburse the funds. The governmental agency shall enter into an agreement with the
6 department prescribing the terms and conditions of the agency in accordance with federal
7 laws and regulations and applicable laws of this state. The moneys paid over by the United
8 States government shall be retained by the state or paid over to the governmental agency
9 under such terms and conditions as may be imposed by the United States government
10 making the grant.

11 **Section 12.** That § 50-7-18 be AMENDED:

12 **50-7-18. Indemnification agreements--Lands subject to mineral rights or oil**
13 **and gas leases.**

14 The department may in cases where federal funds are channeled through the
15 department, pursuant to the provisions of § 50-7-17, enter into contracts and agreements
16 binding on this state with the administrator of the ~~federal aviation administration~~Federal
17 Aviation Administration to indemnify the United States for federal funds contributed to the
18 State of South Dakota, or any governmental agency, used for the purchase of land as the
19 site of a public airport or for the construction of airport improvements on the airport within
20 this state where the title to the land is subject to mineral rights or oil and gas leases, the
21 release or subordination of which is determined by the administrator of the ~~federal aviation~~
22 ~~administration~~Federal Aviation Administration not to be practicable.

23 **Section 13.** That § 50-7-19 be AMENDED:

24 **50-7-19. Indemnification agreements--Limitations.**

25 The indemnifying agreements authorized in §§ 50-7-17 and 50-7-18 are limited:

- 26 (1) To agreements which obligate the department, acting for and on behalf of the State
27 of South Dakota, to refund to the United States of America as represented by the
28 administrator of the ~~federal aviation administration~~Federal Aviation Administration,
29 a sum equal to the full amount of federal funds contributed for the purchase of land
30 or construction of airport improvements thereon; or
- 31 (2) At the option of the administrator, to provide and construct at state expense and
32 without further contributions by the federal government, an airport facility
33 equivalent to that developed with the aid of federal funds and located as near as

1 practicable to the site of the existing facilities on land with good title satisfactory to
2 the administrator of the ~~federal aviation administration~~ Federal Aviation
3 Administration as prescribed by the provisions of section 9 of the Federal Airport
4 Act (Public Law 377, 79th Congress, 2nd session as amended to January 1, 2014).

5 **Section 14.** That a NEW SECTION be added:

6 **50-9-14. Airport hazard--Public nuisance--Prevention.**

7 The creation or establishment of an airport hazard is a public nuisance and an
8 injury to the community or the United States served by the airport and shall be prevented
9 in accordance with this title.

10 **Section 15.** That a NEW SECTION be added:

11 **50-9-15. Removal of airport hazards--Public purpose--Public funds.**

12 The prevention of the creation or establishment of airport hazards and the
13 elimination, removal, alteration, mitigation, or marking and lighting of existing airport
14 hazards are public purposes for which the political subdivisions may raise and expend
15 public funds and acquire land or a property interest.

16 **Section 16.** That § 50-10-6 be AMENDED:

17 **50-10-6. Airport layout--Zones--Permitted land uses--Runway protection**
18 **zone--Exclusions.**

19 The regulations required by § 50-10-5 shall divide the airport layout into zones,
20 and, within each zone, specify the land uses permitted, regulate and restrict the height to
21 which structures and ~~trees~~ obstructions may be erected or allowed to grow, prohibit the
22 obstruction by lights, smoke, electronic devices, or any other means, of the safe operation
23 of aircraft near airports, and impose other restrictions and requirements as may be
24 necessary for the protection of the airport. The existing and ultimate runway protection
25 zone as depicted on the airport layout plan shall be zoned to exclude homes and structures
26 that constitute a concentration of people.

27 **Section 17.** That § 50-10-9 be AMENDED:

28 **50-10-9. Regulations--Limitations.**

29 No airport zoning regulation adopted under this chapter may be unreasonable. No
30 regulation may require the removal, lowering, or other change or alteration of any

1 structure or ~~tree-obstruction~~ not conforming to the regulation when adopted or amended,
2 or otherwise interfere with the continuance of any nonconforming use, except as provided
3 in § 50-10-28.

4 **Section 18.** That § 50-11-21 be AMENDED:

5 **50-11-21. Promulgation of rules--Additional registration tax--Aeronautics**
6 **fund.**

7 The commission may prescribe forms and promulgate rules pursuant to chapter 1-
8 26 for the ascertainment, assessment, collection, or return of the additional original
9 registration tax imposed by § 50-11-19. Upon receipt of the original registration tax, the
10 department shall pay it to the state treasurer to be credited to the aeronautics fund.

11 **Section 19.** That § 50-11-33 be AMENDED:

12 **50-11-33. Certificate of registration--Permits--Alteration or forgery--**
13 **Violation as felony.**

14 ~~A person is guilty of a Class 5 felony if the~~ A No person alters, forges, or may:

15 (1) Alter, forge, or causes-cause to be altered or forged, a certificate of registration or
16 permit issued under this chapter, ~~or~~;

17 (2) Alter, forge, or cause to be altered or forged an assignment or endorsement of a
18 certificate of registration; ~~or permit~~

19 (3) Permit, or to hold or use a certificate, assignment, or endorsement knowing it has
20 been altered or forged.

21 A violation of this section is a Class 5 felony.

22 **Section 20.** That § 50-12-2 be AMENDED:

23 **50-12-2. Aircraft dealer's license--Application--Contents.**

24 Any person desiring to sell or solicit as a dealer the sale of aircraft within South
25 Dakota shall apply for an aircraft dealer's license to the department. For the original
26 application, the person shall possess one or more aircraft under normal registration. The
27 application shall be made in writing on a form furnished by the department and shall
28 contain the following information:

29 (1) The name and physical address of the aircraft dealer;

30 (2) The physical address of each owner, director, or principal officer of such aircraft
31 dealer. If the applicant is a foreign corporation, the application shall designate the

1 state of incorporation, and the post office address of the registered office and
2 registered agent of such corporation in South Dakota. Evidence shall be furnished
3 showing that the foreign corporation has been granted authority to do business in
4 South Dakota by the secretary of state. If the applicant is a foreign person or
5 partnership, the application shall set forth the permanent business address in the
6 foreign state; and

7 (3) Whether the applicant has previously been an aircraft dealer in South Dakota, and
8 if so, the number of aircraft the applicant has sold within a period of twenty-four
9 months preceding the date of the application.

10 **Section 21.** That § 50-12-14 be AMENDED:

11 **50-12-14. Dealer's license--Renewal--Requirements--Appeal--Fees.**

12 Each licensed dealer on or before February first of the second year shall ~~make~~
13 ~~application~~ apply for the renewal of the dealer's license. The dealer shall verify having sold
14 or brokered at least six aircraft within the past twenty-four calendar months. However,
15 any dealer not meeting the requirements of this section may appeal to the commission
16 for renewal of a dealer's license if the dealer can demonstrate reasonable cause for not
17 meeting those requirements. The fee for the renewal of a license is the same as that
18 required for an original license. Upon failure to ~~make application~~ apply for the renewal of
19 the license, and to pay the renewal fee on or before the first day of February of the second
20 year, an additional fee of ten dollars per month, or any fraction thereof, is required before
21 the license shall be issued.

22 A former dealer may make an application for an original aircraft dealer's license after
23 thirty-six months from the expiration date of the dealer's license.

24 **Section 22.** That § 50-13-16 be AMENDED:

25 **50-13-16. Reckless operation of aircraft--Violation as misdemeanor--**
26 **Considerations.**

27 It is a Class 1 misdemeanor for any person to operate an aircraft in the air or on
28 the ground or water in a careless or reckless manner so as to endanger or be likely to
29 endanger any person or property. In any proceeding for a violation of this section, the
30 court in determining whether the operation was careless or reckless shall consider the
31 standards for safe operation of aircraft prescribed by federal statutes ~~or~~ regulations, or
32 advisories governing aeronautics.

1 **Section 23.** That § 50-13-18 be AMENDED:

2 **50-13-18. Tampering with aircraft--Violation as misdemeanor.**

3 No person may, without express or implied authority of the owner, operate, climb
4 upon, enter, manipulate the controls or accessories of, set in motion, remove parts or
5 contents therefrom, or otherwise tamper with any ~~civil~~ aircraft within this state with intent
6 to injure the same or cause inconvenience to the owner or operator thereof, or knowingly
7 cause or permit the same to be done.

8 A violation of this section is a Class 1 misdemeanor.

9 **Section 24.** That § 50-15-2 be AMENDED:

10 **50-15-2. Compliance with federal regulations--Exemption from chapter.**

11 Any operation of a drone in the state shall comply with all applicable ~~federal~~
12 ~~aviation administration requirements~~ Federal Aviation Administration regulations. Any
13 drone operating under the authority of the Armed Forces of the United States, including
14 the National Guard, is exempt from this chapter.

15 **Section 25.** That § 50-2-5 be REPEALED.

16 **50-2-5. Duties of commission.**

17 **Section 26.** That § 50-4-1 be REPEALED.

18 **50-4-1. Duties of department.**

19 **Section 27.** That § 50-7-14.1 be REPEALED.

20 **50-7-14.1. Maximum liability of municipality for accidents or occurrences.**

21 **Section 28.** That § 50-9-4 be REPEALED.

22 **50-9-4. Appeal of commission action--Procedure.**

23 **Section 29.** That § 50-10-2 be REPEALED.

24 **50-10-2. Airport hazard as public nuisance--Prevention.**

25 **Section 30.** That § 50-10-2.1 be REPEALED.

1 **50-10-2.1. Removal of airport hazards as public purpose--Use of public**
2 **funds.**