



2020 South Dakota Legislature

House Bill 1117

Introduced by: The Committee on State Affairs at the request of the Office of the Governor

1 **An Act to repeal and revise certain provisions regarding riot, to establish the crime**
 2 **of incitement to riot, and to revise provisions regarding civil liability for riot**
 3 **and riot boosting.**

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

5 **Section 1.** That § 22-10-1 be AMENDED:

6 **22-10-1. Riot--Violation as felony.**

7 Any ~~As used in this chapter, any intentional~~ use of force or violence ~~or any threat~~
 8 ~~to use force or violence, if accompanied by immediate power of execution,~~ by three or
 9 more persons, acting together and without authority of law, to cause any injury to any
 10 person or any damage to property is riot. ~~Riot~~ A violation of this section is a Class 4 felony.

11 **Section 2.** That § 22-10-6 be REPEALED.

12 **22-10-6. Encouraging or soliciting violence in riot--Felony.**

13 **Section 3.** That § 22-10-6.1 be REPEALED.

14 **22-10-6.1. Encouraging or soliciting violence in riot without participating--**
 15 **Felony.**

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

17 **22-10-17. Incitement to riot--Violation as felony.**

18 Any person who, with the intent to cause a riot, commits an act or engages in
 19 conduct that urges three or more people, acting together and without authority of law, to
 20 use force or violence to cause any injury to any person or any damage to property, under
 21 circumstances in which the force or violence is imminent and the urging is likely to incite
 22 or produce the use of force or violence, incites riot. For the purposes of this chapter, urging

1 includes instigating, inciting, or directing, but does not include the oral or written advocacy
 2 of ideas or expression of belief that does not urge the commission of an act or conduct of
 3 imminent force or violence. This section may not be construed to prevent the peaceable
 4 assembly of persons for lawful purposes of protest or petition. A violation of this section
 5 is a Class 5 felony.

6 **Section 5.** That § 20-9-53 be AMENDED:

7 **20-9-53. Definitions.**

8 Terms used in §§ 20-9-53 to 20-9-57, inclusive, mean:

- 9 (1) "Civil recoveries," funds received by the state from any third party as damages
 10 resulting from ~~violations of chapter 22-10-riot or riot boosting~~ that cause the state
 11 or a political subdivision to incur costs ~~arising from riot boosting under § 20-9-54;~~
 12 (2) "Incitement to riot," any person who, with the intent to cause a riot, commits an
 13 act or engages in conduct that urges three or more people, acting together and
 14 without authority of law, to use force or violence to cause any injury to any person
 15 or any damage to property, under circumstances in which the force or violence is
 16 imminent and the urging is likely to incite or produce the use of force or violence,
 17 incites riot. Urging includes instigating, inciting, or directing, but does not include
 18 the oral or written advocacy of ideas or expression of belief that does not urge the
 19 commission of an act or conduct of imminent force or violence;
 20 (3) "Person," any individual, joint venture, association, partnership, cooperative,
 21 limited liability company, corporation, nonprofit, other entity, or any group acting
 22 as a unit;
 23 ~~(3)~~(4) "Political subdivision," a county or municipality;
 24 ~~(4)~~(5) "Riot," ~~the same as the term is defined under § 22-10-1~~ any intentional use of force
 25 or violence by three or more persons, acting together and without authority of law,
 26 to cause any injury to any person or any damage to property; and
 27 ~~(5)~~(6) "Secretary," the secretary of the Department of Public Safety.

28 **Section 6.** That § 20-9-54 be AMENDED:

29 **20-9-54. Liability for riot or riot boosting.**

30 ~~In addition to any other liability or criminal penalty under law, a person is liable for~~
 31 ~~riot boosting, jointly and severally with any other person, to the state or a political~~
 32 ~~subdivision in an action for damages if the person:~~

1 ~~(1) Participates in any riot and directs, advises, encourages, or solicits any other person~~
 2 ~~participating in the riot to acts of force or violence;~~

3 ~~(2) Does not personally participate in any riot but directs, advises, encourages, or~~
 4 ~~solicits other persons participating in the riot to acts of force or violence; or~~

5 ~~(3) Upon the direction, advice, encouragement, or solicitation of any other person, uses~~
 6 ~~force or violence, or makes any threat to use force or violence, if accompanied by~~
 7 ~~immediate power of execution, by three or more persons, acting together and~~
 8 ~~without authority of law.~~

9 In addition to any other liability or criminal penalty under law, a person is
 10 personally liable for riot, and jointly and severally liable for riot with any other person
 11 engaged in the same riot, to the state or a political subdivision in an action for damages
 12 if the person commits riot as defined in § 20-9-53.

13 In addition to any other liability or criminal penalty under law, a person is
 14 personally liable for riot boosting, and jointly and severally liable for riot boosting with any
 15 other person engaged in the same riot, to the state or a political subdivision in an action
 16 for damages if the person commits incitement to riot as defined in § 20-9-53.

17 Nothing in this section may be construed to include the oral or written advocacy of
 18 ideas or expression of belief that does not urge the commission of an act or conduct of
 19 imminent force or violence. This section may not be construed to prevent the peaceable
 20 assembly of persons for lawful purposes of protest or petition.

21 **Section 7.** That § 20-9-55 be AMENDED:

22 **20-9-55. Action for riot and riot boosting--Evidence--Procedure.**

23 A person is subject to the jurisdiction of the courts of this state for riot or riot
 24 boosting that results in a riot in this state, regardless of whether the person engages in
 25 riot or riot boosting personally, or through any employee, agent, or subsidiary.

26 Evidence is not admissible in an action for riot or riot boosting ~~action~~ that shows that
 27 any damages, in whole or in part, were paid by a third party. Notwithstanding any other
 28 law, any action arising under § 20-9-54 is governed by the procedural and substantive
 29 law of this state.

30 Any action for riot or riot boosting shall be for the exclusive benefit of the state, political
 31 subdivision, or an otherwise damaged third party, and shall be brought in the name of the
 32 state or political subdivision. The state, a political subdivision, or any third party having
 33 an interest in preventing a riot or riot boosting may enter into an agreement to establish
 34 joint representation of a cause of action under § 20-9-54.

1 **Section 8.** That § 20-9-56 be AMENDED:

2 **20-9-56. Damages for riot and riot boosting.**

3 The plaintiff in an action for riot or riot boosting may recover both special and
4 general damages, reasonable attorney's fees, disbursements, other reasonable expenses
5 incurred from prosecuting the action, and punitive damages. ~~A defendant who solicits or~~
6 ~~compensates any other person to commit an unlawful act or to be arrested is subject to~~
7 ~~three times a sum that would compensate for the detriment caused.~~ A fine paid by a
8 defendant for any violation of chapter 22-10 may not be applied toward payment of
9 liability under § 20-9-54.