2020 South Dakota Legislature

Senate Bill 151

Introduced by: ***Senator*** *Stalzer*

An Act to define critical infrastructure and revise certain crimes for the trespass or damage to critical infrastructure.

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

Section 1. That § 22-1-2 be AMENDED:

22-1-2. Definitions.

Terms used in this title mean:

(1) If applied to the intent with which an act is done or omitted:

(a) The words, "malice, maliciously," and all derivatives thereof import a wish to intentionally vex, annoy, or injure another person, established either by proof or presumption of law;

(b) The words, "intent, intentionally," and all derivatives thereof, import a specific design to cause a certain result or, if the material part of a charge is the violation of a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, a specific design to engage in conduct of that nature;

(c) The words, "knowledge, knowingly," and all derivatives thereof, import only a knowledge that the facts exist which bring the act or omission within the provisions of any statute. A person has knowledge if that person is aware that the facts exist which bring the act or omission within the provisions of any statute. Knowledge of the unlawfulness of such act or omission is not required;

(d) The words, "reckless, recklessly," and all derivatives thereof, import a conscious and unjustifiable disregard of a substantial risk that the offender's conduct may cause a certain result or may be of a certain nature. A person is reckless with respect to circumstances if that person consciously and unjustifiably disregards a substantial risk that such circumstances may exist;

(e) The words, "neglect, negligently," and all words derived thereof, import a want of attention to the nature or probable consequences of an act or omission which a prudent person ordinarily bestows in acting in his or her own concerns;

(f) If the section defining an offense provides that negligence suffices to establish an element thereof, then recklessness, knowledge, intent, or malice also constitutes sufficient culpability for such element. If recklessness suffices to establish an element of the offense, then knowledge, intent or malice also constitutes sufficient culpability for such element. If knowledge suffices to establish an element of an offense, then intent or malice also constitutes sufficient culpability for such element. If intent suffices to establish an element of an offense, then malice also constitutes sufficient culpability for such element;

(2) "Actor," the person who takes the active part in a transaction;

(3) "Affirmative defense," an issue involving an alleged defense to which, unless the state's evidence raises the issue, the defendant, to raise the issue, must present some credible evidence. If the issue involved in an affirmative defense is raised, then the guilt of the defendant must be established beyond a reasonable doubt as to that issue as well as all other elements of the offense;

(4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured before 1899, and any replica of any firearm described in this section if such replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(5) "Check," any check, draft, order or other commercial device which orders a financial institution to pay a sum certain of money on its presentment;

(6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm is capable of being seen, it is not concealed;

(7) "Consideration," any type of property or thing of legal value, whether delivered in the past, present or to be delivered in the future. The term includes an unfulfilled promise to deliver. The term may include an advantage or benefit to the promisor or a loss or detriment to the promisee. Any amount, advantage or inconvenience, no matter how trifling, is sufficient to constitute consideration;

(8) "Controlled weapon" includes any firearm silencer, machine gun, or short shotgun, as those terms are defined in subdivisions (17), (23), and (46) of this section;

(9) "Crime of violence," any of the following crimes or an attempt to commit, or a conspiracy to commit, or a solicitation to commit any of the following crimes: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony child abuse as defined in § 26-10-1, or any other felony in the commission of which the perpetrator used force, or was armed with a dangerous weapon, or used any explosive or destructive device;

(10) "Critical infrastructure facility," any of the following facilities, whether in operation, idle, or under construction, maintenance or repair, that are enclosed by a fence or other physical barrier that is obviously designed to exclude trespassers or are clearly marked with a sign that is posted on the property and reasonably likely to come to the attention of any trespasser that indicates that entry is forbidden:

(a) Electric utility facility, including a power generation facility, an electric transmission facility, an electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity;

(b) Water tower, municipal or rural water system well, water intake structure, or water treatment facility;

(c) Natural gas utility facility, including a regulator station, a compressor station, an odorization facility, a main line valve, a natural gas storage facility, or any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. The term does not include gas transmission pipeline property that is not completely enclosed, posted, and maintained by the natural gas utility;

(d) Tank farm, pipeline terminal, pipeline, pump or compressor station or storage facility for gasoline, crude or refined or synthetic oil, ethanol, propane, liquid natural gas, or other hazardous liquid;

(e) Transportation facility, including a port, railroad switching yard, or trucking terminal;

(f) Hazardous waste storage, treatment, or disposal facility;

(g) Natural resources exploration, mining, or production equipment, refined product storage, or distribution facility;

(h) Communications services facility, including a central operation office, cable head end, cable node, cellular telephone tower site, or a transmission facility for a federally licensed radio or television antenna system;

(i) Dam that is owned by the state or a subdivision;

(j) Facility either(i) whose owner or operator is required to submit a risk management plan under the federal Chemical Safety Information, Site Security, and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)); or(ii) is identified and regulated by the United States Department of Homeland Security Chemical Facility Anti–Terrorism Standards (CFATS) program; or

(k) Any construction area, pipeyard, or laydown yard for any of the above, whether permanent or temporary in nature;

(11) "Dangerous weapon" or "deadly weapon," any firearm, stun gun, knife, or device, instrument, material, or substance, whether animate or inanimate, which is calculated or designed to inflict death or serious bodily harm, or by the manner in which it is used is likely to inflict death or serious bodily harm;

~~(11)~~(12) "Dealer in stolen property," any person who:

(a) Is found in possession or control of property stolen from two or more persons on separate occasions; or

(b) Has received stolen property in another transaction within the year preceding the commencement of the prosecution; or

(c) Trades in property similar to the type of stolen property received and acquires such property for a consideration which that person knows is substantially below its reasonable value;

~~(12)~~(13) "Deprive," to take or to withhold property of another or to dispose of property of another so as to make it unlikely that the owner will receive it;

~~(13)~~(14) "Destructive device,"

(a) Any bomb, grenade, explosive missile, or similar device or any launching device therefor; or

(b) Any breakable container which contains a flammable liquid with a flashpoint of one hundred and fifty degrees Fahrenheit or less and has a wick or similar device capable of being ignited;

(c) The term does not include "permissible fireworks," defined by § 34-37-5; any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety or similar device;

surplus ordnance sold, loaned or given by the secretary of the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or 4686; or any other device which is an antique or is a rifle which the owner intends to use solely for sporting purposes;

~~(14)~~(15) "Explosive," any substance, or combination of substances, that is used for the purpose of detonation and which, upon exposure to any external or internal force or condition, is capable of a relatively instantaneous release of gas and heat. The term does not include "permissible fireworks," as defined by § 34-37-5;

~~(15)~~(16) "Financial institution," a bank, insurance company, credit union, savings and loan association, investment trust, or other organization held out to the public as a place of deposit of funds or medium of savings or collective investment;

~~(16)~~(17) "Firearm," any weapon from which a projectile or projectiles may be discharged by gunpowder. As used in this subdivision, the term, gunpowder, includes any propellant that upon oxidization emits heat and light and is commonly used in firearms cartridges;

~~(17)~~(18) "Firearm silencer," any instrument, attachment, weapon or appliance for causing the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to lessen or muffle the noise of the firing of any such weapon;

~~(18)~~(19) "Government," the United States, any state, county, municipality, school district, or other political unit, or any department, agency, or subdivision of any of the foregoing, or any corporation or other association carrying out the functions of any of the foregoing;

~~(19)~~(20) "Immediate family," any spouse, child, parent, or guardian of the victim;

~~(20)~~(21) "Insanity," the condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior;

~~(21)~~(22) "Intoxication," a disturbance of mental or physical capacities resulting from the introduction of substances into the body. Intoxication is not, in itself, a mental disease or defect;

~~(22)~~(23) "Law enforcement officer," any officer, prosecutor, or employee of the state or any of its political subdivisions or of the United States, or, while on duty, an agent or employee of a railroad or express company or security personnel of an airline or airport, who is responsible for the prevention, detection, or prosecution of crimes, for the enforcement of the criminal or highway traffic laws of the state, or

for the supervision of confined persons or those persons on supervised release or probation;

~~(23)~~(24) "Machine gun," any firearm, whatever its size and usual designation, that automatically discharges two or more cartridges by a single function of the firing device;

~~(24)~~(25) "Mental illness," any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment, but not to the extent that the person is incapable of knowing the wrongfulness of such act. Mental illness does not include abnormalities manifested only by repeated criminal or otherwise antisocial conduct;

~~(25)~~(26) "Moral turpitude," an act done contrary to justice, honesty, principle, or good morals, as well as an act of baseness, vileness, or depravity in the private and social duties which a person owes to his fellow man or to society in general;

~~(26)~~(27) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer, trailer coach, cabin trailer, or any vehicle propelled by power other than muscular power;

~~(27)~~(28) "Obtain,"

(a) In relation to property, to bring about a transfer or purported transfer of a legal interest in the property, whether to the actor or another; or

(b) In relation to labor or service, to secure performance thereof;

~~(28)~~(29) "Occupied structure," any structure:

(a) Which is the permanent or temporary habitation of any person, whether or not any person is actually present;

(b) Which at the time is specially adapted for the overnight accommodation of any person, whether or not any person is actually present; or

(c) In which at the time any person is present;

~~(29)~~(30) "Offense" or "public offense," any crime, petty offense, violation of a city or county ordinance, or act prohibited by state or federal law;

~~(30)~~(31) "Pass," to utter, publish or sell or to put or send forth into circulation. The term includes any delivery of a check to another for value with intent that it shall be put into circulation as money;

~~(31)~~(32) "Person," any natural person, unborn child, association, limited liability company, corporation, firm, organization, partnership, or society. If the term is used to designate a party whose property may be the subject of a crime or petty offense, it also includes the United States, any other country, this state, and any

other state or territory of the United States, and any of their political subdivisions, agencies, or corporations;

~~(32)~~(33) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to expel a projectile or projectiles by the action of an explosive;

~~(33)~~(34) "Private place," a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access;

~~(34)~~(35) "Process," any writ, warrant, summons, or order issued in the course of judicial proceedings;

~~(35)~~(36) "Property," anything of value, including, but not limited to, motor vehicles, real estate, tangible and intangible personal property, contract rights, choses-in-action, and other interests in or claims to wealth, admission or transportation tickets, captured or domestic animals, food and drink, electric or other power, services, and signatures which purport to create, maintain, or extinguish any legal obligation;

~~(36)~~(37) "Property of another," property in which any person other than the actor has an interest upon which the actor is not privileged to infringe, regardless of the fact that the actor also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of an actor may not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement;

~~(37)~~(38) "Public employee," any person employed by the state or any of its political subdivisions, who is not a public officer;

~~(38)~~(39) "Public office," the position held by a public officer or employee;

~~(39)~~(40) "Public officer," any person who holds a position in the state government or in any of its political subdivisions, by election or appointment, for a definite period, whose duties are fixed by law, and who is invested with some portion of the sovereign functions of government;

~~(40)~~(41) "Public record," any official book, paper, or record created, received, or used by or in any office or agency of the state or of any of its political subdivisions;

~~(41)~~(42) "Publish," to disseminate, circulate or place before the public in any way, other than by speech which is not mechanically or electronically amplified;

~~(42)~~(43) "Receive," to acquire possession, control or title, or to lend or borrow on the security of the property;

~~(43)~~(44) "Service," labor that does not include a tangible commodity. The term includes, but is not limited to: labor; professional advice; telephone, cable television and other utility service; accommodations in hotels, restaurants or elsewhere; admissions to exhibits and entertainments; the use of machines designed to be operated by coin or other thing of value; and the use of rental property;

~~(44)~~(45) "Seller," any person or employee engaged in the business of selling pistols at retail;

~~(44A)~~(46) "Serious bodily injury," such injury as is grave and not trivial, and gives rise to apprehension of danger to life, health, or limb;

~~(45)~~(47) "Short rifle," any rifle having a barrel less than sixteen inches long, or an overall length of less than twenty-six inches;

~~(46)~~(48) "Short shotgun," any shotgun having a barrel less than eighteen inches long or an overall length of less than twenty-six inches;

~~(47)~~(49) "Signature," any name, mark or sign written with intent to authenticate any instrument or writing;

~~(48) Deleted by SL 2005, ch 120, § 357~~

~~(49)~~(50) "Structure," any house, building, outbuilding, motor vehicle, watercraft, aircraft, railroad car, trailer, tent, or other edifice, vehicle or shelter, or any portion thereof;

~~(50)~~(51) "Stun gun," any battery-powered, pulsed electrical device of high voltage and low or no amperage that can disrupt the central nervous system and cause temporary loss of voluntary muscle control of a person;

~~(50A)~~(52) "Unborn child," an individual organism of the species homo sapiens from fertilization until live birth;

~~(51)~~(53) "Unoccupied structure," any structure which is not an occupied structure;

~~(52)~~(54) "Vessel," if used with reference to shipping, any ship of any kind and every structure adapted to be navigated from place to place;

~~(53)~~(55) "Victim," any natural person against whom the defendant in a criminal prosecution has committed or attempted to commit a crime;

~~(54)~~(56) "Voluntary intoxication," intoxication caused by substances that an actor knowingly introduces into his or her body, the tendency of which is to cause intoxication;

~~(55)~~(57) "Written instrument," any paper, document, or other instrument containing written or printed matter or the equivalent thereof, used for purposes of reciting, embodying, conveying, or recording information, and any money, credit card, token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of value, right, privilege or identification, which is capable of being used to the advantage or disadvantage of some person.

Section 2. That § 22-35-5 be AMENDED:

22-35-5. Criminal trespass--Violation as misdemeanor.

Any person who, knowing that he or she is not privileged to do so, enters or remains in any building or structure surreptitiously, or enters or remains in any critical infrastructure facility, is guilty of criminal trespass. Criminal trespass is a Class 1 misdemeanor.

Section 3. That § 22-34-28 be AMENDED:

22-34-28. Substantial interruption or impairment--Utility Service--Critical Infrastructure--Violation as felony.

Any person who, by any means, knowingly damages or tampers with any property and, as a direct result:

(1) Causes a substantial interruption or impairment: in television, radio, telephone, telegraph, internet, or other mass communications service; in police, fire, or other public service communications; in radar, radio, or other electronic aids to air or marine navigation or communications; or in amateur or citizens band radio communications being used for public service or emergency communications; ~~or~~

(2) Causes a substantial interruption or impairment in ~~public transportation, water supply, gas, power, or other utility service;~~:

(a) Public transportation;

(b) Water supply;

(c) Gas;

(d) Power;

(e) Other utility service; or

(f) Critical infrastructure facility; or

(3) Interferes with, inhibits, impedes, or prevents the construction, maintenance, or repair of communications, public transportation, a utility service, or a critical infrastructure facility;

is guilty of a Class 6 felony.

Section 4. That a NEW SECTION be added:

22-34-30. Interference with operation--Critical Infrastructure--Violation as felony.

Any person, who by any means knowingly damages, tampers, or interferes with the operation or maintenance of any critical infrastructure facility causing physical injury or death, is guilty of a Class 4 felony.

Section 5. That a NEW SECTION be added:

22-34-31. Determination as victim.

The owner, lessee, or operator, whether a natural or legal person, of a critical infrastructure facility if a crime is committed under § 22-35-5, 22-34-28 22-34-30, or 22-34-32, is a victim under chapters 23A-27, 23A-28, 23A-28A, 23A-28B, and 23A-28C.

Section 6. That a NEW SECTION be added:

22-34-32. Conspiracy--Fines.

If a person, whether natural or legal, is found to be a conspirator in the violation of § 22-34-28, 22-34-30, or 22-35-5, the conspirator may be punished, in addition to other penalties, by a fine up to ten times the amount of any fine otherwise authorized under § 22-3-8.