

## 2020 South Dakota Legislature

**Senate Bill 151****AMENDMENT 151D FOR THE SENATE COMMERCE AND ENERGY BILL**

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

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

4 **Section 1.** That § 22-1-2 be AMENDED:

5 **22-1-2. Definitions.**

6 Terms used in this title mean:

- 7 (1) If applied to the intent with which an act is done or omitted:
- 8 (a) The words, "malice, maliciously," and all derivatives thereof import a wish to  
9 intentionally vex, annoy, or injure another person, established either by proof  
10 or presumption of law;
- 11 (b) The words, "intent, intentionally," and all derivatives thereof, import a  
12 specific design to cause a certain result or, if the material part of a charge is  
13 the violation of a prohibition against conduct of a certain nature, regardless  
14 of what the offender intends to accomplish thereby, a specific design to  
15 engage in conduct of that nature;
- 16 (c) The words, "knowledge, knowingly," and all derivatives thereof, import only  
17 a knowledge that the facts exist which bring the act or omission within the  
18 provisions of any statute. A person has knowledge if that person is aware  
19 that the facts exist which bring the act or omission within the provisions of  
20 any statute. Knowledge of the unlawfulness of such act or omission is not  
21 required;
- 22 (d) The words, "reckless, recklessly," and all derivatives thereof, import a  
23 conscious and unjustifiable disregard of a substantial risk that the offender's  
24 conduct may cause a certain result or may be of a certain nature. A person  
25 is reckless with respect to circumstances if that person consciously and  
26 unjustifiably disregards a substantial risk that such circumstances may exist;

- 1 (e) The words, "neglect, negligently," and all words derived thereof, import a  
2 want of attention to the nature or probable consequences of an act or  
3 omission which a prudent person ordinarily bestows in acting in his or her  
4 own concerns;
- 5 (f) If the section defining an offense provides that negligence suffices to establish  
6 an element thereof, then recklessness, knowledge, intent, or malice also  
7 constitutes sufficient culpability for such element. If recklessness suffices to  
8 establish an element of the offense, then knowledge, intent or malice also  
9 constitutes sufficient culpability for such element. If knowledge suffices to  
10 establish an element of an offense, then intent or malice also constitutes  
11 sufficient culpability for such element. If intent suffices to establish an  
12 element of an offense, then malice also constitutes sufficient culpability for  
13 such element;
- 14 (2) "Actor," the person who takes the active part in a transaction;
- 15 (3) "Affirmative defense," an issue involving an alleged defense to which, unless the  
16 state's evidence raises the issue, the defendant, to raise the issue, must present  
17 some credible evidence. If the issue involved in an affirmative defense is raised,  
18 then the guilt of the defendant must be established beyond a reasonable doubt as  
19 to that issue as well as all other elements of the offense;
- 20 (4) "Antique firearm," any firearm, including any firearm with a matchlock, flintlock,  
21 percussion cap or similar type of ignition system, manufactured before 1899, and  
22 any replica of any firearm described in this section if such replica is not designed or  
23 redesigned for using rimfire or conventional centerfire fixed ammunition or if it uses  
24 rimfire or conventional centerfire fixed ammunition which is no longer manufactured  
25 in the United States and which is not readily available in the ordinary channels of  
26 commercial trade;
- 27 (5) "Check," any check, draft, order or other commercial device which orders a financial  
28 institution to pay a sum certain of money on its presentment;
- 29 (6) "Concealed," any firearm that is totally hidden from view. If any part of the firearm  
30 is capable of being seen, it is not concealed;
- 31 (7) "Consideration," any type of property or thing of legal value, whether delivered in  
32 the past, present or to be delivered in the future. The term includes an unfulfilled  
33 promise to deliver. The term may include an advantage or benefit to the promisor  
34 or a loss or detriment to the promisee. Any amount, advantage or inconvenience,  
35 no matter how trifling, is sufficient to constitute consideration;

- 1 (8) "Controlled weapon" includes any firearm silencer, machine gun, or short shotgun,  
2 as those terms are defined in subdivisions (17), (23), and (46) of this section;
- 3 (9) "Crime of violence," any of the following crimes or an attempt to commit, or a  
4 conspiracy to commit, or a solicitation to commit any of the following crimes:  
5 murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first  
6 degree, arson, kidnapping, felony sexual contact as defined in § 22-22-7, felony  
7 child abuse as defined in § 26-10-1, or any other felony in the commission of which  
8 the perpetrator used force, or was armed with a dangerous weapon, or used any  
9 explosive or destructive device;
- 10 (10) "Critical infrastructure facility," any of the following facilities, whether in operation,  
11 idle, or under construction, maintenance or repair, that are enclosed by a fence or  
12 other physical barrier that is obviously designed to exclude trespassers and are  
13 clearly marked with a sign that is posted on the property and reasonably likely to  
14 come to the attention of any trespasser that indicates that entry is forbidden, or  
15 any pole or tower used for any of the purposes in this subdivision, whether enclosed  
16 or marked with a sign or not:
- 17 (a) Electric utility facility, including a power generation facility, an electric  
18 transmission facility, an electric station or substation, or any other facility  
19 used to support the generation, transmission, or distribution of electricity;
- 20 (b) Water tower, municipal or rural water system well, water intake structure,  
21 or water treatment facility;
- 22 (c) Natural gas utility facility, including a regulator station, a compressor  
23 station, an odorization facility, a main line valve, a natural gas storage  
24 facility, or any other facility used to support the acquisition, transmission,  
25 distribution, or storage of natural gas;
- 26 (d) Tank farm, pipeline terminal, pipeline, pump or compressor station or  
27 storage facility for gasoline, crude or refined or synthetic oil, ethanol,  
28 propane, liquid natural gas, or other hazardous liquid;
- 29 (e) Transportation facility, including a port, railroad switching yard, or trucking  
30 terminal;
- 31 (f) Hazardous waste storage, treatment, or disposal facility;
- 32 (g) Oil and gas locations, facilities, and equipment, including temporary drilling  
33 rigs, permanent oil and gas product facilities, and artificial lift equipment;
- 34 (h) Communications services facility, infrastructure or equipment involved in  
35 the carriage of essential communications services for both wired and

- 1 wireless communications, switching, routing, repeater/amplifier equipment  
2 or other electronic equipment, macro and micro wireless towers using  
3 federally licensed spectrum, video head end equipment, and satellite  
4 communications receiver or transmission equipment;
- 5 (i) Dam that is owned by the state or a subdivision;
- 6 (j) Facility either(i) whose owner or operator is required to submit a risk  
7 management plan under the federal Chemical Safety Information, Site  
8 Security, and Fuels Regulatory Relief Act (42 U.S.C. 7412(r)); or(ii) is  
9 identified and regulated by the United States Department of Homeland  
10 Security Chemical Facility Anti-Terrorism Standards (CFATS) program; or
- 11 (k) Any construction area, pipeyard, or laydown yard for any of the above,  
12 whether permanent or temporary in nature;
- 13 (11) "Dangerous weapon" or "deadly weapon," any firearm, stun gun, knife, or device,  
14 instrument, material, or substance, whether animate or inanimate, which is  
15 calculated or designed to inflict death or serious bodily harm, or by the manner in  
16 which it is used is likely to inflict death or serious bodily harm;
- 17 ~~(11)~~(12) "Dealer in stolen property," any person who:
- 18 (a) Is found in possession or control of property stolen from two or more persons  
19 on separate occasions; or
- 20 (b) Has received stolen property in another transaction within the year preceding  
21 the commencement of the prosecution; or
- 22 (c) Trades in property similar to the type of stolen property received and acquires  
23 such property for a consideration which that person knows is substantially  
24 below its reasonable value;
- 25 ~~(12)~~(13) "Deprive," to take or to withhold property of another or to dispose of property  
26 of another so as to make it unlikely that the owner will receive it;
- 27 ~~(13)~~(14) "Destructive device,"
- 28 (a) Any bomb, grenade, explosive missile, or similar device or any launching  
29 device therefor; or
- 30 (b) Any breakable container which contains a flammable liquid with a flashpoint  
31 of one hundred and fifty degrees Fahrenheit or less and has a wick or similar  
32 device capable of being ignited;
- 33 (c) The term does not include "permissible fireworks," defined by § 34-37-5; any  
34 device which is neither designed nor redesigned for use as a weapon; any  
35 device, although originally designed for use as a weapon, which is redesigned

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

6 ~~(14)~~(15) "Explosive," any substance, or combination of substances, that is used for  
7 the purpose of detonation and which, upon exposure to any external or internal  
8 force or condition, is capable of a relatively instantaneous release of gas and heat.  
9 The term does not include "permissible fireworks," as defined by § 34-37-5;

10 ~~(15)~~(16) "Financial institution," a bank, insurance company, credit union, savings and  
11 loan association, investment trust, or other organization held out to the public as a  
12 place of deposit of funds or medium of savings or collective investment;

13 ~~(16)~~(17) "Firearm," any weapon from which a projectile or projectiles may be  
14 discharged by gunpowder. As used in this subdivision, the term, gunpowder,  
15 includes any propellant that upon oxidization emits heat and light and is commonly  
16 used in firearms cartridges;

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

20 ~~(18)~~(19) "Government," the United States, any state, county, municipality, school  
21 district, or other political unit, or any department, agency, or subdivision of any of  
22 the foregoing, or any corporation or other association carrying out the functions of  
23 any of the foregoing;

24 ~~(19)~~(20) "Immediate family," any spouse, child, parent, or guardian of the victim;

25 ~~(20)~~(21) "Insanity," the condition of a person temporarily or partially deprived of  
26 reason, upon proof that at the time of committing the act, the person was incapable  
27 of knowing its wrongfulness, but not including an abnormality manifested only by  
28 repeated unlawful or antisocial behavior;

29 ~~(21)~~(22) "Intoxication," a disturbance of mental or physical capacities resulting from  
30 the introduction of substances into the body. Intoxication is not, in itself, a mental  
31 disease or defect;

32 ~~(22)~~(23) "Law enforcement officer," any officer, prosecutor, or employee of the state  
33 or any of its political subdivisions or of the United States, or, while on duty, an  
34 agent or employee of a railroad or express company or security personnel of an  
35 airline or airport, who is responsible for the prevention, detection, or prosecution of

1 crimes, for the enforcement of the criminal or highway traffic laws of the state, or  
2 for the supervision of confined persons or those persons on supervised release or  
3 probation;

4 ~~(23)~~(24) "Machine gun," any firearm, whatever its size and usual designation, that  
5 automatically discharges two or more cartridges by a single function of the firing  
6 device;

7 ~~(24)~~(25) "Mental illness," any substantial psychiatric disorder of thought, mood or  
8 behavior which affects a person at the time of the commission of the offense and  
9 which impairs a person's judgment, but not to the extent that the person is  
10 incapable of knowing the wrongfulness of such act. Mental illness does not include  
11 abnormalities manifested only by repeated criminal or otherwise antisocial conduct;

12 ~~(25)~~(26) "Moral turpitude," an act done contrary to justice, honesty, principle, or good  
13 morals, as well as an act of baseness, vileness, or depravity in the private and social  
14 duties which a person owes to his fellow man or to society in general;

15 ~~(26)~~(27) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer,  
16 trailer coach, cabin trailer, or any vehicle propelled by power other than muscular  
17 power;

18 ~~(27)~~(28) "Obtain,"

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

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

22 ~~(28)~~(29) "Occupied structure," any structure:

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

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

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

28 ~~(29)~~(30) "Offense" or "public offense," any crime, petty offense, violation of a city or  
29 county ordinance, or act prohibited by state or federal law;

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

33 ~~(31)~~(32) "Person," any natural person, unborn child, association, limited liability  
34 company, corporation, firm, organization, partnership, or society. If the term is  
35 used to designate a party whose property may be the subject of a crime or petty

1 offense, it also includes the United States, any other country, this state, and any  
2 other state or territory of the United States, and any of their political subdivisions,  
3 agencies, or corporations;

4 ~~(32)~~(33) "Pistol," any firearm with a barrel less than sixteen inches in length, designed  
5 to expel a projectile or projectiles by the action of an explosive;

6 ~~(33)~~(34) "Private place," a place where one may reasonably expect to be safe from  
7 casual or hostile intrusion or surveillance, but does not include a place to which the  
8 public or a substantial group thereof has access;

9 ~~(34)~~(35) "Process," any writ, warrant, summons, or order issued in the course of  
10 judicial proceedings;

11 ~~(35)~~(36) "Property," anything of value, including, but not limited to, motor vehicles,  
12 real estate, tangible and intangible personal property, contract rights, choses-in-  
13 action, and other interests in or claims to wealth, admission or transportation  
14 tickets, captured or domestic animals, food and drink, electric or other power,  
15 services, and signatures which purport to create, maintain, or extinguish any legal  
16 obligation;

17 ~~(36)~~(37) "Property of another," property in which any person other than the actor has  
18 an interest upon which the actor is not privileged to infringe, regardless of the fact  
19 that the actor also has an interest in the property and regardless of the fact that  
20 the other person might be precluded from civil recovery because the property was  
21 used in an unlawful transaction or was subject to forfeiture as contraband. Property  
22 in possession of an actor may not be deemed property of another who has only a  
23 security interest therein, even if legal title is in the creditor pursuant to a conditional  
24 sales contract or other security agreement;

25 ~~(37)~~(38) "Public employee," any person employed by the state or any of its political  
26 subdivisions, who is not a public officer;

27 ~~(38)~~(39) "Public office," the position held by a public officer or employee;

28 ~~(39)~~(40) "Public officer," any person who holds a position in the state government or  
29 in any of its political subdivisions, by election or appointment, for a definite period,  
30 whose duties are fixed by law, and who is invested with some portion of the  
31 sovereign functions of government;

32 ~~(40)~~(41) "Public record," any official book, paper, or record created, received, or used  
33 by or in any office or agency of the state or of any of its political subdivisions;

34 ~~(41)~~(42) "Publish," to disseminate, circulate or place before the public in any way,  
35 other than by speech which is not mechanically or electronically amplified;

- 1     ~~(42)~~(43)     "Receive," to acquire possession, control or title, or to lend or borrow on the  
2                   security of the property;
- 3     ~~(43)~~(44)     "Service," labor that does not include a tangible commodity. The term  
4                   includes, but is not limited to: labor; professional advice; telephone, cable television  
5                   and other utility service; accommodations in hotels, restaurants or elsewhere;  
6                   admissions to exhibits and entertainments; the use of machines designed to be  
7                   operated by coin or other thing of value; and the use of rental property;
- 8     ~~(44)~~(45)     "Seller," any person or employee engaged in the business of selling pistols at  
9                   retail;
- 10    ~~(44A)~~(46)    "Serious bodily injury," such injury as is grave and not trivial, and gives rise  
11                  to apprehension of danger to life, health, or limb;
- 12    ~~(45)~~(47)     "Short rifle," any rifle having a barrel less than sixteen inches long, or an  
13                  overall length of less than twenty-six inches;
- 14    ~~(46)~~(48)     "Short shotgun," any shotgun having a barrel less than eighteen inches long  
15                  or an overall length of less than twenty-six inches;
- 16    ~~(47)~~(49)     "Signature," any name, mark or sign written with intent to authenticate any  
17                  instrument or writing;
- 18    ~~(48)~~ Deleted by SL 2005, ch 120, § 357
- 19    ~~(49)~~(50)     "Structure," any house, building, outbuilding, motor vehicle, watercraft,  
20                  aircraft, railroad car, trailer, tent, or other edifice, vehicle or shelter, or any portion  
21                  thereof;
- 22    ~~(50)~~(51)     "Stun gun," any battery-powered, pulsed electrical device of high voltage and  
23                  low or no amperage that can disrupt the central nervous system and cause  
24                  temporary loss of voluntary muscle control of a person;
- 25    ~~(50A)~~(52)    "Unborn child," an individual organism of the species homo sapiens from  
26                  fertilization until live birth;
- 27    ~~(51)~~(53)     "Unoccupied structure," any structure which is not an occupied structure;
- 28    ~~(52)~~(54)     "Vessel," if used with reference to shipping, any ship of any kind and every  
29                  structure adapted to be navigated from place to place;
- 30    ~~(53)~~(55)     "Victim," any natural person against whom the defendant in a criminal  
31                  prosecution has committed or attempted to commit a crime;
- 32    ~~(54)~~(56)     "Voluntary intoxication," intoxication caused by substances that an actor  
33                  knowingly introduces into his or her body, the tendency of which is to cause  
34                  intoxication;



1       ~~(55)~~(57) "Written instrument," any paper, document, or other instrument containing  
2           written or printed matter or the equivalent thereof, used for purposes of reciting,  
3           embodying, conveying, or recording information, and any money, credit card,  
4           token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of  
5           value, right, privilege or identification, which is capable of being used to the  
6           advantage or disadvantage of some person.

7       **Section 2.** That § 22-35-5 be AMENDED:

8           **22-35-5. Criminal trespass--Violation as misdemeanor.**

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

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

14           **22-34-28. Substantial interruption or impairment--Utility Service--Critical**  
15          **Infrastructure--Violation as felony.**

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

- 18          (1) Causes a substantial interruption or impairment: in television, radio, telephone,  
19          telegraph, internet, or other mass communications service; in police, fire, or other  
20          public service communications; in radar, radio, or other electronic aids to air or  
21          marine navigation or communications; or in amateur or citizens band radio  
22          communications being used for public service or emergency communications; ~~or~~  
23          (2) Causes a substantial interruption or impairment in ~~public transportation, water~~  
24          ~~supply, gas, power, or other utility service;~~  
25                (a) Public transportation;  
26                (b) Water supply;  
27                (c) Gas service;  
28                (d) Electric service; or  
29                (e) Other utility service;  
30          is guilty of a Class 6 felony.

31

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

2 ~~Interference with operation--Critical Infrastructure--Violation as misdemeanor or felony.~~

3 ~~Any person who by any means interferes with, inhibits, impedes, or prevents the construction,~~  
4 ~~operation, maintenance, or repair of communications, public transportation, water supply,~~  
5 ~~gas, electric, or other utility service, or a critical infrastructure facility is guilty of a Class 1~~  
6 ~~misdemeanor.~~

7 ~~Any person who by any means, knowingly, interferes with, inhibits, impedes, or prevents the~~  
8 ~~construction, operation, maintenance, or repair of communications, public transportation,~~  
9 ~~water supply, gas, electric, or other utility service, or a critical infrastructure facility is guilty~~  
10 ~~of a Class 6 felony.~~

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

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

15 **22-34-31. Determination as victim.**

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