

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0213

## HOUSE TRANSPORTATION COMMITTEE ENGROSSED NO. **HB 1034** - 01/23/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle  
2 drivers.

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

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as  
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily  
8 substance;

9 (2) Under the influence of an alcoholic beverage;

10 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
11 which renders ~~him~~ the person incapable of safely driving; or

12 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
14 safely driving.



1 Section 2. That § 32-23-7 be amended to read as follows:

2 32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle  
3 while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of  
4 § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by  
5 chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives rise  
6 to the following presumptions:

7 (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
8 defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the  
9 influence of intoxicating liquor;

10 (2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
11 hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does  
12 not give rise to any presumption that the defendant was or was not under the  
13 influence of intoxicating liquor, but such fact may be considered with other competent  
14 evidence in determining the guilt or innocence of the defendant;

15 (3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
16 in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
17 influence of intoxicating liquor.

18 Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
19 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

20 Section 3. That § 32-23-1.3 be amended to read as follows:

21 32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle  
22 while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater,  
23 shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if  
24 the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record

1 and files the reasons with the clerk of courts.

2 Section 4. That § 32-12A-44 be amended to read as follows:

3 32-12A-44. No person may drive or be in actual physical control of a commercial motor  
4 vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that  
5 person's blood as shown by chemical analysis of that person's breath, blood, or other body  
6 substance. Any violation of this section is a Class 2 misdemeanor.