

State of South Dakota

NINETY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 2017

392Y0633

SENATE STATE AFFAIRS

ENGROSSED NO. **SB 176** - 2/22/2017

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: The Committee on State Affairs

1 FOR AN ACT ENTITLED, An Act to authorize the creation of public safety zones, to authorize
2 certain actions to be implemented by the Governor, to provide certain penalties, and to
3 declare an emergency.

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

5 Section 1. That chapter 34-48A be amended by adding a NEW SECTION to read:

6 Upon the occurrence of an event that may consume significant public resources, poses a
7 threat to public or private property, and poses a threat to the health and welfare of the public,
8 the Governor may declare any location within the state to be a public safety zone and issue an
9 order authorizing any action provided for under § 34-48A-5, 34-48A-6, 34-48A-32, 34-48A-34,
10 34-48A-36, 34-48A-41, 34-48A-46, 34-48A-47, 34-48A-48, 34-48A-49, 34-48A-51, or 34-
11 48-53, without declaring an emergency or disaster, within the public safety zone and within one
12 mile thereof.

13 Section 2. That § 34-48A-5 be amended to read:

14 34-48A-5. In the event of disaster, war, act of terrorism as defined in state law, or emergency



1 that is beyond local government capability, the Governor:

2 (1) May assume direct operational control over all or any part of the emergency
3 management functions within the state which may affect all or any portion of the
4 state;

5 (2) May declare an emergency or disaster to exist in the stricken area and employ
6 emergency management to assist local authorities to affect relief and restoration;

7 (3) May call upon and use any facilities, equipment, other nonmedical supplies, and
8 resources available from any source, other than personal or private funds, in order to
9 carry out the purposes of this chapter by contributing to the expense incurred in
10 providing relief in such amounts as the Governor shall determine. However, nothing
11 in this subdivision may be construed to authorize the taking of firearms, as defined
12 in subdivision 22-1-2(16), without the consent of the owner;

13 (4) May suspend the provisions of any rules of any state agency, if strict compliance with
14 the provisions of the rule would in any way prevent, hinder, or delay necessary action
15 in managing a disaster, war, act of terrorism, or emergency, including fire, flood,
16 earthquake, severe high and low temperatures, tornado storm, wave action, oil spill,
17 or other water or air contamination, epidemic, blight, drought, infestation, explosion,
18 riot, or hostile military or paramilitary action, which is determined by the Governor
19 to require state or state and federal assistance or actions to supplement the recovery
20 efforts of local governments in alleviating the damage, loss, hardship, or suffering
21 caused thereby;

22 (5) May control the ingress and egress in a designated disaster, public safety zone, or
23 emergency area, the movement of vehicles upon highways within the area, the
24 movement of persons within the area, and the occupancy of premises within the area;

- 1 (6) May procure, acquire, store, distribute, and dispense any pharmaceutical agents or
2 medical supplies located within the state as may be reasonable and necessary to
3 respond to the disaster, emergency, or act of terrorism;
- 4 (7) May appoint and prescribe the duties of such out-of-state health care providers as
5 may be reasonable and necessary to respond to the disaster, emergency, or act of
6 terrorism;
- 7 (8) May provide for the examination and safe disposal of any dead body as may be
8 reasonable and necessary to respond to the disaster, emergency, or act of terrorism;
9 and
- 10 (9) May provide for the protection, construction or reconstruction, repair, and
11 maintenance of public or private transportation facilities.

12 The powers granted to the Governor under this section shall remain in effect for a period of
13 six months and may be restored for one or more successive six-month periods by declaration
14 of the Governor that the conditions permitting such powers persist.

15 Section 3. That § 22-35-6 be amended to read:

16 22-35-6. Any person who, knowing that he or she is not privileged to do so, enters or
17 remains in any place where notice against trespass is given by:

- 18 (1) Actual communication to the person who subsequently commits the trespass;
- 19 (2) Posting in a manner reasonably likely to come to the attention of trespassers; or
- 20 (3) Fencing or other enclosure which a reasonable person would recognize as being
21 designed to exclude trespassers;

22 is guilty of a Class 2 misdemeanor. However, if ~~such~~ the trespasser defies an order to leave,
23 personally communicated to him or her by the owner of the premises or by any other authorized
24 person, the trespasser is guilty of criminal trespass, which is a Class 1 misdemeanor.

1 If the trespasser defies a posted order not to enter a public safety zone established under
2 chapter 34-48A, the trespasser is guilty of aggravated criminal trespass, which is a Class 1
3 misdemeanor. The trespasser shall be sentenced to county jail for a period of not less than ten
4 days and none of the sentence may be suspended.

5 Section 4. That chapter 22-35 be amended by adding a NEW SECTION to read:

6 If a person is convicted of aggravated criminal trespass and the person has been convicted
7 within the past two years of the same offense, the person is guilty of a Class 6 felony.

8 Section 5. That chapter 22-35 be amended by adding a NEW SECTION to read:

9 Any conviction or plea of guilty, occurring within two years, for or to an offense in another
10 state which, if committed in this state, would be a violation of § 22-10-1 or 22-10-11 shall be
11 used to determine if the violation being charged is a first or second offense.

12 Section 6. That chapter 22-35 be amended by adding a NEW SECTION to read:

13 In any criminal case for aggravated criminal trespass brought pursuant to the § 22-35-6,
14 whether brought by information or indictment, a separate supporting information shall allege,
15 in addition to the principal offense charged, any former conviction within two years of the date
16 the newly alleged offense occurred. If the information is in two separate parts, each part shall
17 be signed by the prosecutor. If the underlying charge is brought by indictment the part two
18 information shall be signed by the prosecutor. In the first part the particular offense with which
19 the accused is charged shall be set out, and in the other part any former conviction shall be
20 alleged.

21 Section 7. That chapter 5-4 be amended by adding a NEW SECTION to read:

22 Upon the request of the Governor, the commissioner of school and public lands may prohibit
23 any group larger than twenty persons from congregating upon any tract of land under the
24 supervision of the commissioner of school and public lands, if the prohibition is necessary to

1 preserve the undisturbed use of the land by the lessee or if the land may be damaged by the
2 activity.

3 Section 8. That chapter 16-18 be amended by adding a NEW SECTION to read:

4 The Chief Justice of the South Dakota Supreme Court may waive any requirement of
5 § 16-18-2 and admit any attorney licensed in the another jurisdiction within the United States,
6 for a period not to exceed one year, for the limited purpose of defending any defendant charged
7 with violation of a public safety zone established under chapter 34-48A if the Chief Justice
8 deems that the waiver is necessary in the interest of the sound administration of justice.

9 Section 9. That § 32-30-2.4 be amended to read:

10 32-30-2.4. The Department of Transportation with respect to highways under its jurisdiction
11 may promulgate rules pursuant to chapter 1-26 to prohibit or restrict the stopping, standing, or
12 parking of vehicles or the presence of any person standing outside of a motor vehicle, on any
13 highway or highway right-of-way if such stopping, standing, ~~or~~ parking, or presence of any
14 person standing is dangerous to those using the highway or if the stopping, standing, or parking
15 of vehicles or the presence of persons outside of a motor vehicle would unduly interfere with
16 the free movement of traffic ~~thereon~~ on the highway. If such a rule is promulgated, the highway
17 shall be signed to indicate where such stopping, standing, or parking is prohibited. The secretary
18 of transportation may establish a temporary no parking zone, not to exceed ninety days, if the
19 secretary of public safety and the secretary of transportation, after consultation with the director
20 of the highway patrol, agree that a no parking zone is necessary for the protection of life and
21 property. ~~Such~~ The signs are official signs and no person may stop, stand, or park any vehicle
22 or stand outside a motor vehicle in violation of the restrictions stated on ~~such~~ the signs. A
23 violation of this section is a Class 2 misdemeanor.

24 Section 10. That chapter 22-18 be amended by adding a NEW SECTION to read:

1 Unless otherwise directed by law enforcement or other emergency personnel or to seek
2 assistance for an emergency or inoperable vehicle, no person may stand upon the paved or
3 improved or main-traveled portion of any highway with intent to impede or stop the flow of
4 traffic. A violation of this section is a Class 1 misdemeanor.

5 Section 11. The provisions of this Act are repealed on July 1, 2020.

6 Section 12. Whereas, this Act is necessary for the immediate preservation of the public
7 peace, health, or safety, an emergency is hereby declared to exist, and this Act shall be in full
8 force and effect from and after its passage and approval.