



**OFFICE OF ATTORNEY GENERAL**

1302 East Highway 14, Suite 1  
Pierre, South Dakota 57501-8501  
Phone (605) 773-3215  
Fax (605) 773-4106  
<http://atg.sd.gov/>

**JASON R. RAVNSBORG**  
ATTORNEY GENERAL

**CHARLES D. McGUIGAN**  
CHIEF DEPUTY ATTORNEY GENERAL

April 8, 2022

TO: Law Enforcement and Interested Persons

FROM: Charles D. McGuigan, Chief Deputy Attorney General *MD*

RE: **Legislation Passed in 2022**

The 2022 South Dakota Legislature considered 553 pieces of legislation. The House introduced 340 bills and the Senate introduced 213 bills. The Governor signed 247 bills into law. The Governor vetoed four pieces of legislation and the Legislature sustained all four of the Governor's vetoes.

The Attorney General requested the introduction of three pieces of legislation during the 2022 Legislative Session. The Legislature adopted all three of the bills and the Governor signed all three bills into law. **HB 1036** revises certain provisions regarding search warrants for tracking devices. This bill updates the definition of a tracking device and increases the time period a tracking device can be used from 45 to 60 days. The bill also allows that the warrant may be executed in any part of the state where the person or object is found if, after the issuance of a warrant, the person or object moves or is taken out of the jurisdiction of the court issuing the warrant. **HB 1037** revises the penalty for certain willful violations by grain buyers and grain warehouse operators. This bill amends existing penalties dealing with the willful failure of grain buyers and operators to notify the PUC of not meeting required financial standards. This bill changes the violation from a Class 6 felony and now makes a willful violation that results in financial loss punishable as theft under chapter 22-30A. Under chapter 22-30A, the penalty for theft is determined by the value of the property stolen, ranging from a Class 2 misdemeanor to a Class 2 felony. **HB 1038** establishes an opioid abatement and remediation fund and declares an emergency. In 2019 South Dakota joined multistate litigation involving the distributors and manufactures of opioids. In the fall of 2021, a settlement was proposed with the distributors and with some of the manufactures to settle the opioid litigation. The settlement became final in February 2022. Under the settlement South Dakota will get between \$50,000,000 and \$56,000,000 in settlement proceeds. The settlement requires

South Dakota to have a dedicated fund for settlement proceeds and this bill provides the settlement funds with a place to go. The bill also divides the settlement proceeds between the State and participating local governments. Seventy percent of the proceeds will go to the State for opioid remediation and 30% will go to participating local governments also for the purposes of opioid remediation. This bill contains an emergency clause and became law with the Governor's signature on March 28, 2022.

During the 2022 Legislative Session, the Office of Attorney General monitored 94 bills and monitored an additional 52 bills dealing with marijuana. The Office of Attorney General supported 12 bills and opposed 14 bills during the 2022 Legislative Session.

The following bills will become law on July 1, 2022, unless noted otherwise:

**SB 28** – Disqualifies for life any person from driving a commercial vehicle who is convicted of a felony offense involving human trafficking. This bill requires the Department of Public Safety to disqualify a person from driving a commercial motor vehicle for life and the person is not eligible for reinstatement if that person is convicted of a felony human trafficking offense under either state or federal law.

**SB 29** – Authorizes highway maintenance vehicles to operate at less than posted minimum speed on interstate highways. This bill exempts persons operating highway equipment in the performance of highway maintenance duties from the 40-mph minimum speed limit on the interstate.

**SB 34** – Makes an appropriation for the enhancement and improvement of state radio infrastructure and declares an emergency. This bill appropriates \$750,000 for the purpose of the enhancement and improvement of the State radio infrastructure near Redfield and White River. This appropriation contained an emergency clause and became law upon the Governor's signature on **March 22, 2022**.

**SB 35** – Increases penalties for actions related to grain transactions. This bill was brought at the request of the Public Utilities Commission and increases the civil fines and penalties the PUC can impose on businesses and persons dealing with grains transactions.

**SB 38** – Prohibits a grain broker from engaging in certain transactions or activities and provides a penalty. This bill was also brought at the request of the Public Utilities Commission and makes it a Class 5 felony for an unlicensed person to hold himself or herself out as a grain broker. The bill also makes it a Class 5 felony for a broker to negotiate or attempt to negotiate a grain transaction with an unlicensed grain buyer or to take title or attempt to take

title to grain that is subject to a transaction being negotiated by the grain broker. The bill also allows the PUC to assess a civil fine.

**SB 73** – Provides for the use of artificial light and night-vision equipment while hunting coyotes and other predators. The bill allows persons hunting on public land to use night-vision equipment but not artificial light from January first to August 31<sup>st</sup> to hunt coyotes and other predators. The bill also allows a person to use night-vision equipment and artificial light provided the person is on private land. The bill requires that persons using night-vision equipment hunt either with a shotgun and shotshells or a firearm and a cartridge having a bullet diameter of less than .225 inches.

**SB 74** – Revises provisions regarding out-of-state motor carrier violations. This bill makes it a Class 2 misdemeanor for any person to drive a commercial motor vehicle on the highways of this state while the motor carrier operation employing the person is subject to any out-of-service order. The bill also has clarification to various sections regarding out-of-service order issued pursuant to § 32-12A-8.1.

**SB 77** – Enhances the penalty on registered sex offenders who commit sexual contact without consent from a person capable of consenting. This bill makes it a Class 6 felony for a registered sex offender to violate SDCL 22-22-7.4.

**SB 81** – Revises the definition of sexual contact for purposes of sexual contact with a child under eighteen years of age by a person in a position of authority. This bill amends the definition of sexual contact under § 22-22-7.8 to include the buttocks or upper inner thighs.

**SB 83** – Modifies when a notion for expungement of an arrest record may be made and declares an emergency. This bill adds a fourth method for expungements and allows an expungement within one year from the date the prosecuting attorney formally dismisses the entire criminal case on the record upon a showing of compelling necessity. This bill contained an emergency clause and became law upon the Governor's signature on **March 15, 2022**.

**SB 91** – Revises provisions regarding the use of certain lights by county highway department authorized vehicles. This bill allows county highway vehicles performing winter highway maintenance duties to use blue lights.

**SB 101** - Revises provisions regarding the sale or service of alcoholic beverages by persons under the age of twenty-one. This bill amends SDCL 35-4-79.4 to allow persons eighteen years or older to sell or serve alcohol including tending bar or drawing, pouring or mixing alcoholic beverages. The bill also requires any person tending bar or drawing, pouring or mixing alcoholic beverages to be certified by a nationally recognized alcohol management program.

**SB 103** – Makes an appropriation to support the teen court program and declares an emergency. This bill appropriates \$500,000 from the general fund for the purpose of supporting the teen court grant program. The appropriation became valid upon the Governor’s signature on **March 24, 2022**.

**SB 119** – Prohibits sexual contact between prison employees and prisoners. This bill makes it a Class 6 felony for any person employed by the State or employed within any state prison to knowingly engage in an act of sexual contact with a person who is in detention and under the custodial, supervisory, or disciplinary authority of the employee.

**SB 120** – Revises the crime of invasion of privacy by recording to include intentionally manipulated images or recordings. This bill amends SDCL 22-21-4 to include images or recordings that have been intentionally manipulated to create a realistic but false image and causes a reasonable person to mistakenly believe the image or recording is authentic.

**SB 136** – This bill primarily addresses emergency detainment related to drugs or alcohol. The bill replaces the term “commitment” with the term “detainment”. The bill also gives more discretion to the person operating the facility by allowing the administrator of an approved treatment facility to refuse an application if upon personal observation the person to be detained does not meet the grounds for emergency detainment. The bill also requires that law enforcement only transport a person if the criteria for protective custody is met at the time of transport.

**SB 155** – Makes an appropriation for programs that assist victims of domestic violence, abuse and neglect and declares an emergency. This bill appropriates \$5,000,000 to the Department of Public Safety for the purposes of providing grants through the victim services program to organizations that provide support for victims of domestic violence, abuse and neglect. This bill contained an emergency clause, and the appropriation became valid upon the Governor’s signature on **March 24, 2022**.

**SB 169** – Establishes a means for certain Department of Corrections inmates to earn credit against fines or costs ordered by the sentencing court. This bill allows inmates ineligible to receive a wage for work performed while incarcerated because the inmate does not have a verifiable Social Security number to request a hearing where the court can determine whether there is good cause to consider the inmates employment circumstances and to allow the inmate to be credited the current rate of pay for institutional work assignments in accordance with work performed by the inmate.

**SB 188** – Allows for unlicensed businesses to store alcoholic beverages. This bill allows any person not licensed under Title 35 to store alcoholic beverages for a fee for any other person not licensed under Title 35.

**SB 195** – Establishes the burden of proof after a claim of immunity. This bill amends SDCL 22-18-4.8 and requires the prosecution to overcome a claim of self-defense immunity by clear and convincing evidence. The bill also defines criminal prosecution to include arresting, detaining in custody, and charging or prosecuting the defendant.

**SB 199** - Revises provision related to a name change for certain crime victims. This bill allows a court to order a new certificate of birth to a person who obtains a court order for a name change for a minor child victim of human trafficking who has a particularized need for a change of name or an adult victim of domestic abuse if the adult shows a particularized need for a change of name to protect the petitioner from the perpetrator.

**SB 201** – Revises provisions regarding industrial hemp and declares an emergency. The bill defines applicant, green house, measurement of uncertainty and product in process. A product in process includes hemp products that need an additional processing step in order to meet the 0.3% THC limit. The bill allows a product with 1% THC to be transported to an additional facility for additional processing. The bill also prohibits a hemp producer from growing, storing, or transporting hemp with marijuana. The bill contained an emergency clause and became law upon the Governor's signature on **March 18, 2022**.

**SB 212** – Revises certain fees collected by the Office of the Secretary of State. This bill was brought at the request of the Governor eliminates the fees for a person applying for a permit to carry a concealed pistol.

**HB 1027** – Places certain substances on the controlled substances schedule and to declare an emergency. This is the Department of Health's annual bill to update South Dakota's controlled substance schedules. This year's bill adds seven synthetic opioids to Schedule I, adds two hallucinogenic substances to Schedule I, adds one substance to Schedule II used for the treatment of schizophrenia and bipolar disorder and adds one substance to Schedule IV used for the treatment of ADHD. This bill contained an emergency clause and became law upon the Governor's signature on **February 9, 2022**.

**HB 1036** – Revises certain provisions regarding search warrants for tracking devices. This bill was brought at the request of the Attorney General. See paragraph 2 above.

**HB 1037** – Revises the penalty for certain willful violations by grain buyers and grain warehouse operators. This bill was brought by the Attorney General. See paragraph 2 above.

**HB 1038** - Establishes an opioid abatement and remediation fund and declares an emergency. This bill was brought at the request of the Attorney General. See paragraph 2 above. This bill contained an emergency clause and became law upon the Governor's signature on **March 28, 2022**.

**HB 1068** – Clarifies the processing of sexual assault kits performed on individuals ages sixteen and seventeen. This bill is in response to Official Attorney General Opinion 21-01. The bill clarifies that a minor age sixteen or seventeen may consent to a sexual assault kit without the consent of a parent or guardian. If a minor refuses to consent to the performance of a sexual assault kit, the minor's refusal has no impact on any applicable mandatory reporting obligation in the law. Further, the confidentiality provisions of SDCL 23-5C-3 do not impact any applicable mandatory reporting obligations associated with abused or neglected minors.

**HB 1069** – Includes out-of-state convictions as a basis for an enhanced penalty for certain drug crimes. This bill amends SDCL 22-42-2 to allow for any conviction or plea of guilty to an offense in another state which if committed in this state and occurring within fifteen years prior to the date of the violation being charged can be used to determine if the violation being charged is a second or subsequent offense.

**HB 1075** – Modifies legal and official notice publication requirements. This bill requires newspapers to place any legal notice required by law to be published in a newspaper to place the notice on a statewide website established and maintained as a repository for such notices by an organization representing a majority of South Dakota newspapers. The newspapers website must be accessible and free to the public.

**HB 1078** – Authorizes the use of electric all-terrain and off-road vehicles on public highways and declares an emergency. The bill amends SDCL 32-20-13 to include any all-terrain vehicle, with four or more wheels, propelled by an electric motor that draws power from a battery that is capable of being recharged. The bill also clarifies that this section does not apply to a golf cart, a low-speed vehicle or a toy or youth off-road vehicle. This bill contained an emergency clause, so it became law upon the Governor's signature on **February 23, 2022**.

**HB 1084** – Provides for the regulation of motorized foot scooters and declares an emergency. This bill allows a municipality to adopt by ordinance, traffic regulations permitting the use of a motorized foot scooter on any street, bike path or multi-use path within its platted boundaries. This bill contained an emergency clause and so it became law upon the Governor's signature on **March 28, 2022**.

**HB 1096** – Revises provisions regarding livestock identification. This bill allows a livestock owner to choose to identify animals using any methods set out in federal regulations as well as any additional methods that are later approved by the South Dakota Animal Industry Board.

**HB 1099** – Revises provisions related to courtroom modifications for child witnesses. This bill amends SDCL 26-8A-30 to revise the age of the minor from twelve to sixteen and to include any act of human trafficking.

**HB 1100** - Revises provisions related to the video recording of certain victim testimony at a preliminary hearing or deposition. This bill amends SDCL 23A-12-9 so that if a victim is less than sixteen years of age at the time of a preliminary hearing or deposition, a prosecuting or defense attorney may apply for an order that the victim's testimony at the preliminary hearing or deposition, in addition to being stenographically recorded, be recorded and preserved on video. The defendant must be charged with rape, sexual contact or human trafficking.

**HB 1105** – Allows for a good cause exception to the time for an involuntary commitment hearing. This bill was brought at the request of the Chief Justice. This bill allows for a commitment hearing to be continued for good cause prior to the running of the applicable time period.

**HB 1106** – Provides for the security and privacy of certain personally identifiable information for judicial officers and declares an emergency. This bill was brought at the request of the Chief Justice and allows Secretary of State to protect personally identifiable information of a circuit court judge or supreme court justice or a candidate for one of those offices. The term “personally identifiable information” means any home address, home or personal telephone number, or personal email address. The bill does provide that the county of residence is a public record. This bill contained an emergency clause, so it became the law upon the Governor's signature on **February 14, 2022**.

**HB 1107** – Establishes a process for requesting records prepared or maintained by court services officers. This bill was brought at the request of the Chief Justice and allows a court to order that records be received by a person pursuant to court order and such records must be held confidential by the receiving party unless otherwise authorized by court. Section 2 of the bill allows a person in connection with a judicial proceeding, but who is not authorized by court order, to file a motion with court seeking access to the court services officer or testimony. The motion must state the issue to which the record or testimony is relevant, how the records or testimony is admissible and the reason why the records or testimony can not be obtained elsewhere.

**HB 1108** – Revises provisions related to driving under the influence. This bill was brought at the request of the Chief Justice to clarify the courts authority to allow a person with a revoked license to drive for the purposes of childcare.

**HB 1109** – Revises provision related to the review of the master jury list. This bill was brought at the request of the Chief Justice and amends SDCL 16-13-15 and removes the county auditor having to ascertain whether each of the persons on the master juror list has the qualifications of a juror. This obligation now rests solely with the clerk of courts.

**HB 1110** - Revises a provision related to the appointment of a guardian ad litem or a special advocate to represent an abused or neglected child. This bill was brought of the request of the Chief Justice and amends SDCL 26-8A-20 to require the court to appoint a special advocate if available and to allow the court to appoint a guardian ad litem when determined necessary by the court.

**HB 1113** – Prohibits threats made with the intent to coerce an abortion and to provide a penalty therefor. Section 1 of this bill amends SDCL 22-17-13 to make it a Class B felony if, with the intent to cause a pregnant mother to undergo an abortion against her will, the person threatens to commit against the pregnant mother, or any other person within the pregnant mother's presence, homicide, aggravated assault or kidnapping. The threat must result in the death of the unborn child. This bill adds a new section to chapter 22-17 making it a Class 5 felony to coerce a pregnant mother to undergo an abortion against her will by threatening the mother with homicide, aggravated assault or kidnapping. The bill also makes it a Class 1 misdemeanor for a person to use any other means to coerce, compel or attempt to compel a pregnant woman to undergo an abortion.

**HB 1122** – Requires criminal background checks for emergency medical technicians and advanced life support personnel.

**HB 1131** – Provides for a revocation of hunting, trapping or fishing privileges. This bill amends SDCL 41-9-8 to give the court discretion to order the revocation of a person's hunting, fishing or trapping privileges for one year based upon the facts and circumstances of the case. The bill still allows for a mandatory revocation of hunting and fishing privileges if it is proven that the person knowingly entered or remained on private property for the purposes of hunting, fishing or trapping.

**HB 1162** - Defines a loaded firearm. This bill adds a definition to SDCL 22-1-2 as to what constitutes a loaded firearm. Under this bill a loaded firearm is any functional firearm that contains a cartridge, shell or projectile in the chamber, including any chamber in the cylinder of a revolver. The bill also repeals the definition of a loaded firearm located in SDCL 41-1-1.



**HB 1174** – Revises requirements for sales of catalytic converters to scrap metals businesses. This bill amends the section of the solid waste management chapter dealing with scrap metal recycling to define nonferrous metal to include detached catalytic converters. This bill requires scrap metal businesses to keep records of any transaction involving a detached catalytic converter regardless of the purchase price and adds a new section which only allows the sale of a catalytic converter to a licensed scrap metal business.

**HB 1177** – Establishes provisions regarding ejection of persons from certain lodging establishments and recreational vehicle facilities. This bill establishes ten criteria which would allow the hotel, campground, or RV park to eject a person from the premises without return of the person's rental payment.

**HB 1214** – Prohibits forms of caller identification manipulation and imposes a penalty. This bill makes it a Class 1 misdemeanor for a person to intentionally cause to be displayed as a caller identification, a fictitious or misleading name or telephone number in order to defraud, cause harm or wrongfully obtain anything of value or to use another person's number who has not granted the person the right to display that other person's name or telephone number. Section 2 of the bill creates exceptions for law enforcement, investigative, protective or intelligence activity, protective services or domestic violence shelter, legitimate activities by a telecommunications company or any activity authorized by a court order.

**HB 1272** – Revises provisions related to counseling for domestic abuse defendants. This bill clarifies that domestic abuse counseling includes issues of power and control, accountability, emotional regulation or cognitive work addressing errors in thinking. The bill also allows the court to recommend individual or group counseling meeting the requirements of domestic abuse counseling where that counseling is available.

**HB 1292** – Regulates delta-8 tetrahydrocannabinol, THC-O acetate, and hexahydrocannabinol for those under the age of twenty-one. This bill makes it a Class 2 misdemeanor to knowingly sell or distribute a product intended for human consumption containing delta-8, THC-O acetate or hexahydrocannabinol to a person under the age of twenty-one. It also makes it a Class 2 misdemeanor for a person under twenty-one to attempt to buy such a product.

**HB 1318** – Prohibits medical abortion by telemedicine and increases the penalty for the unlicensed practice of medicine when performing a medical abortion. This bill was brought at the request of the Governor and makes it a Class 6 felony for any person who practices medicine or any of the branches there of, to prescribe medicine in order to induce a medical abortion. The bill requires that a licensed doctor prescribe and dispense in a licensed abortion facility the medication within nine weeks after conception and that the

physician observe the patient taking the medication and to monitor the pregnant mother for complications. The bill requires the facility to schedule a follow up appointment for the pregnant mother to return to the abortion facility on the fourteenth day after taking the medication to confirm the medication worked properly. The bill also establishes additional reporting requirements concerning the performance of a medical abortion. Portions of this bill will only become effective when there is no longer an injunction preventing enforcement of the procedures.

**HB 1322** – Provides for the direct sale of certain home-produced or home-processed foods and food products. This bill exempts from licensure by the Department of Health a person selling non-temperature-controlled food prepared at a residence, home-processed canned goods, baked goods prepared at a residence, or any food product prepared at a residence authorized under SDCL 34-18-36. The bill requires producers selling home-processed goods to complete every five years food safety training approved by the Department. The training must be available online. The producer selling home-processed goods may, in lieu of the required training, maintain verification of each recipe from a third-party processing authority. Any producer who verifies compliance with the food safety training requirements may sell any non-heat processed fermented food provided the food is consistently maintained at a temperature that is at or below forty-one degrees, Kuchen and baked goods that require time and temperature control in home-processed frozen fruit and produce provided the food is consistently maintained at a temperature at or below zero degrees Fahrenheit.

**HB 1328** – Requires law enforcement to report certain seizures of property. This bill establishes certain reporting requirements for property seized or forfeited under the civil forfeiture statutes. The bill requires the Attorney General to establish a searchable data base open to the public and to prepare an annual report concerning the seizure of property by law enforcement. The bill sets out twenty-eight different items that law enforcement must report and that the Attorney General must include in the searchable data base and the annual report.

### **MEDICAL MARIJUANA**

During the 2022 South Dakota Legislature, the Legislature adopted, and the Governor signed 23 pieces of legislation dealing with medical marijuana. The bills substantially change the provisions of medical marijuana located in SDCL 34-20G. I would encourage everyone interested in medical marijuana to review chapter 34-20G after July 1, when these 23 bills become effective. Seventeen bills came from the summer study conducted by the Marijuana Interim Study Committee.

**SB 4** - Revises provisions related to a written certification for the medical use of cannabis.

**SB 5** - Revises acceptable conduct related to the medical use of cannabis.

**SB 6** - Revises provisions related to prohibited conduct by schools and landlords related to medical cannabis.

**SB 7** - Revises provisions related to custody and visitation rights by medical cannabis cardholders.

**SB 9** - Revises the definition of a designated caregiver.

**SB 10** - Revises provisions related to verifications required prior to receiving medical cannabis.

**SB 12** - Revises the annual report on medical cannabis by the Department of Health to the Legislature.

**SB 13** - Repeals provisions permitting certain documents to serve as temporary registry identification cards for medical cannabis.

**SB 14** - Revises provisions related to the confidential list of medical cannabis cardholders maintained by the Department of Health.

**SB 15** - Revises provisions providing that certain professions are not subject to discipline for certain conduct relating to medical cannabis.

**SB 17** - Revises provisions regarding cost reimbursement associated with medical cannabis.

**SB 18** - Revises rulemaking authority related to medical cannabis.

**SB 19** - Permits certain facilities to establish reasonable restrictions related to the medical use of cannabis.

**SB 21** - Revises provisions related to the revocation of a medical cannabis registry identification card.

**SB 23** - Revises the definition of bona fide practitioner-patient relationship.

**SB 24** - Establishes a maximum number of cannabis plants that may be cultivated by a medical cannabis cardholder.

**SB 26** - Revises the definition of practitioner for purposes of the medical cannabis program.

**SB 27** - Revises the provisions regarding the denial or nonrenewal of a patient registry identification card.

**SB 118** - Establishes provisions related to the testing of medical cannabis.

**SB 190** - Revises provisions regarding municipal zoning of medical cannabis establishments.

**HB 1056** - Revises provisions related to medical cannabis data maintained by the Department of Health.

**HB 1097** - Clarifies conduct that is not required related to medical cannabis.

Please feel free to contact me if you need additional information. You can access all the bills introduced by the 2022 Legislature at the South Dakota Legislative Research Council website. The web address for the 2022 session is at this location: <https://sdlegislature.gov/>