



2022 South Dakota Legislature

House Bill 1162

HOUSE AGRICULTURE AND NATURAL RESOURCES ENGROSSED

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

Introduced by: **Representative** Kevin Jensen

1 **An Act to define a loaded firearm.**

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

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

4 **22-1-2.** Terms used in this title mean:

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

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

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

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

20 (d) The words, "reckless, recklessly," and all derivatives thereof, import a
21 conscious and unjustifiable disregard of a substantial risk that the offender's
22 conduct may cause a certain result or may be of a certain nature. A person
23 is reckless with respect to circumstances if that person consciously and
24 unjustifiably disregards a substantial risk that such circumstances may
25 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
23 or redesigned for using rimfire or conventional centerfire fixed ammunition or if it
24 uses rimfire or conventional centerfire fixed ammunition which is no longer
25 manufactured in the United States and which is not readily available in the ordinary
26 channels of 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 (9A) "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 mainline 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 headend 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, pipe yard, or laydown yard for any of the above,
12 whether permanent or temporary in nature;
- 13 (10) "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) "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) "Deprive," to take or to withhold property of another or to dispose of property of
26 another so as to make it unlikely that the owner will receive it;
- 27 (13) "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

- 1 redesigned for use as a signaling, pyrotechnic, line throwing, safety or
2 similar device; surplus ordnance sold, loaned or given by the secretary of
3 the army pursuant to the provisions of 10 U.S.C. §§ 4684(2), 4685, or
4 4686; or any other device which is an antique or is a rifle which the owner
5 intends to use solely for sporting purposes;
- 6 (14) "Explosive," any substance, or combination of substances, that is used for the
7 purpose of detonation and which, upon exposure to any external or internal force
8 or condition, is capable of a relatively instantaneous release of gas and heat. The
9 term does not include "permissible fireworks," as defined by § 34-37-5;
- 10 (15) "Financial institution," a bank, insurance company, credit union, savings and loan
11 association, investment trust, or other organization held out to the public as a place
12 of deposit of funds or medium of savings or collective investment;
- 13 (16) "Firearm," any weapon from which a projectile or projectiles may be discharged by
14 gunpowder. As used in this subdivision, the term, gunpowder, includes any
15 propellant that upon oxidization emits heat and light and is commonly used in
16 firearms cartridges;
- 17 (17) "Firearm silencer," any instrument, attachment, weapon or appliance for causing
18 the firing of any gun, revolver, pistol, or other firearm to be silent, or intended to
19 lessen or muffle the noise of the firing of any such weapon;
- 20 (18) "Government," the United States, any state, county, municipality, school district,
21 or other political unit, or any department, agency, or subdivision of any of the
22 foregoing, or any corporation or other association carrying out the functions of any
23 of the foregoing;
- 24 (19) "Immediate family," any spouse, child, parent, or guardian of the victim;
- 25 (20) "Insanity," the condition of a person temporarily or partially deprived of reason,
26 upon proof that at the time of committing the act, the person was incapable of
27 knowing its wrongfulness, but not including an abnormality manifested only by
28 repeated unlawful or antisocial behavior;
- 29 (21) "Intoxication," a disturbance of mental or physical capacities resulting from the
30 introduction of substances into the body. Intoxication is not, in itself, a mental
31 disease or defect;
- 32 (22) "Law enforcement officer," any officer, prosecutor, or employee of the state or any
33 of its political subdivisions or of the United States, or, while on duty, an agent or
34 employee of a railroad or express company or security personnel of an airline or
35 airport, who is responsible for the prevention, detection, or prosecution of crimes,

- 1 for the enforcement of the criminal or highway traffic laws of the state, or for the
2 supervision of confined persons or those persons on supervised release or
3 probation;
- 4 (22A) "Loaded firearm," any functional firearm that contains a cartridge, shell, or
5 projectile in the chamber, including any chamber in the cylinder of a revolver;
- 6 (23) "Machine gun," any firearm, whatever its size and usual designation, that
7 automatically discharges two or more cartridges by a single function of the firing
8 device;
- 9 (24) "Mental illness," any substantial psychiatric disorder of thought, mood or behavior
10 which affects a person at the time of the commission of the offense and which
11 impairs a person's judgment, but not to the extent that the person is incapable of
12 knowing the wrongfulness of such act. Mental illness does not include abnormalities
13 manifested only by repeated criminal or otherwise antisocial conduct;
- 14 (25) "Moral turpitude," an act done contrary to justice, honesty, principle, or good
15 morals, as well as an act of baseness, vileness, or depravity in the private and
16 social duties which a person owes to his fellow man or to society in general;
- 17 (26) "Motor vehicle," any automobile, motor truck, motorcycle, house trailer, trailer
18 coach, cabin trailer, or any vehicle propelled by power other than muscular power;
- 19 (27) "Obtain,"
20 (a) In relation to property, to bring about a transfer or purported transfer of a
21 legal interest in the property, whether to the actor or another; or
22 (b) In relation to labor or service, to secure performance thereof;
- 23 (28) "Occupied structure," any structure:
24 (a) Which is the permanent or temporary habitation of any person, whether or
25 not any person is actually present;
26 (b) Which at the time is specially adapted for the overnight accommodation of
27 any person, whether or not any person is actually present; or
28 (c) In which at the time any person is present;
- 29 (29) "Offense" or "public offense," any crime, petty offense, violation of a city or county
30 ordinance, or act prohibited by state or federal law;
- 31 (30) "Pass," to utter, publish or sell or to put or send forth into circulation. The term
32 includes any delivery of a check to another for value with intent that it shall be put
33 into circulation as money;
- 34 (31) "Person," any natural person, unborn child, association, limited liability company,
35 corporation, firm, organization, partnership, or society. If the term is used to

- 1 designate a party whose property may be the subject of a crime or petty offense,
2 it also includes the United States, any other country, this state, and any other state
3 or territory of the United States, and any of their political subdivisions, agencies,
4 or corporations;
- 5 (32) "Pistol," any firearm with a barrel less than sixteen inches in length, designed to
6 expel a projectile or projectiles by the action of an explosive;
- 7 (33) "Private place," a place where one may reasonably expect to be safe from casual or
8 hostile intrusion or surveillance, but does not include a place to which the public or
9 a substantial group thereof has access;
- 10 (34) "Process," any writ, warrant, summons, or order issued in the course of judicial
11 proceedings;
- 12 (35) "Property," anything of value, including, but not limited to, motor vehicles, real
13 estate, tangible and intangible personal property, contract rights, choses-in-action,
14 and other interests in or claims to wealth, admission or transportation tickets,
15 captured or domestic animals, food and drink, electric or other power, services,
16 and signatures which purport to create, maintain, or extinguish any legal
17 obligation;
- 18 (36) "Property of another," property in which any person other than the actor has an
19 interest upon which the actor is not privileged to infringe, regardless of the fact
20 that the actor also has an interest in the property and regardless of the fact that
21 the other person might be precluded from civil recovery because the property was
22 used in an unlawful transaction or was subject to forfeiture as contraband. Property
23 in possession of an actor may not be deemed property of another who has only a
24 security interest therein, even if legal title is in the creditor pursuant to a
25 conditional sales contract or other security agreement;
- 26 (37) "Public employee," any person employed by the state or any of its political
27 subdivisions, who is not a public officer;
- 28 (38) "Public office," the position held by a public officer or employee;
- 29 (39) "Public officer," any person who holds a position in the state government or in any
30 of its political subdivisions, by election or appointment, for a definite period, whose
31 duties are fixed by law, and who is invested with some portion of the sovereign
32 functions of government;
- 33 (40) "Public record," any official book, paper, or record created, received, or used by or
34 in any office or agency of the state or of any of its political subdivisions;

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

1 embodying, conveying, or recording information, and any money, credit card,
2 token, stamp, seal, badge, trade mark, service mark or any evidence or symbol of
3 value, right, privilege or identification, which is capable of being used to the
4 advantage or disadvantage of some person.

5 **Section 2. That § 41-1-1 be AMENDED:**

6 **41-1-1.** Terms used in this title mean:

- 7 (1) "Any part thereof" or "the parts thereof," includes the hide, horns, and hoofs of any
8 animal so referred to, and the plumage and skin and every other part of any bird
9 so referred to;
- 10 (2) "Bait," baitfish, frogs, toads, salamanders, crayfish, freshwater shrimp, clams,
11 snails and leeches;
- 12 (3) "Baitfish," includes fish of the minnow family (cyprinidae) except carp (cyprinus
13 spp.) and goldfish (carassius spp.), fish of the sucker family (castostomidae)
14 except buffalofish (ictiobus spp.) and carpsucker (carpiodes spp.), and fish of the
15 stickleback family (gasterosteidae);
- 16 (4) "Big game," all cloven-hoofed wild animals, wild mountain lion, wild black bear, and
17 wild turkey. The term includes facsimiles of big game used for law enforcement
18 purposes, but does not include any captive nondomestic animal of the mammalia
19 class and the products thereof regulated by the Animal Industry Board under Title
20 40;
- 21 (5) "Big game seal," a locking seal which bears the same number as the license with
22 which it is issued;
- 23 (6) "Big game tag," a tag which is part of the regular big game license and bears the
24 same number as the license proper;
- 25 (7) "Biological specimens," wild nongame animals used for scientific study and collected
26 for resale to biological supply companies;
- 27 (8) "Carcass," the dead body of any wild animal to which it refers, including the head,
28 hair, skin, plumage, skeleton, or any other part thereof;
- 29 (9) "Domestic animal," any animal that through long association with man, has been
30 bred to a degree which has resulted in genetic changes affecting the temperament,
31 color, conformation, or other attributes of the species to an extent that makes it
32 unique and different from wild individuals of its kind;
- 33 ~~(9A)~~(10) "Domicile," a person's established, fixed, and permanent home to which the
34 person, whenever absent, has the present intention of returning;

- 1 ~~(10)~~(11) "Fishing," the taking, capturing, killing, or fishing for fish of any variety in
2 any manner. If the word, fish, is used as a verb, it has the same meaning as the
3 word, fishing;
- 4 ~~(11)~~(12) "Fur-bearing animals," opossum, muskrat, beaver, mink, marten, river otter,
5 fisher, blackfooted ferret, skunks (all species), raccoon, badger, red, grey and swift
6 fox, coyote, bobcat, lynx, weasel, and jackrabbit;
- 7 ~~(12)~~(13) "Game," all wild mammals or birds;
- 8 ~~(13)~~(14) "Game fish," all species belonging to the paddlefish, sturgeon, salmon (trout),
9 pike, catfish (including bullheads), sunfish (including black bass and crappies),
10 perch (including walleye and sauger), and bass families. All species not included in
11 the game fish families are rough fish;
- 12 ~~(14)~~(15) "Hunt" or "hunting," shooting, shooting at, pursuing, taking, attempting to
13 take, catching, or killing of any wild animal or animals;
- 14 ~~(15)~~ "Loaded firearm," any firearm or other implement capable of discharging a
15 projectile, containing cartridges, shells or projectiles in either the chamber, clip, or
16 magazine;
- 17 (16) "Migratory waterfowl," any wild geese, swans, brants, coot, merganser, or wild
18 ducks;
- 19 (17) "Migratory bird," all migratory waterfowl, sandhill crane, snipe, and dove;
- 20 (18) "Motor vehicle," any self-propelled vehicle and any vehicle propelled or drawn by a
21 self-propelled vehicle, whether operated upon a highway, railroad track, on the
22 ground, in the water, or in the air;
- 23 (19) "Nondomestic animal," any animal that is not domestic;
- 24 (20) "Possession," both actual and constructive possession, as well as the control of the
25 article referred to;
- 26 (21) "Predator/varmint," coyote, wolf, gray fox, red fox, skunk, gopher, ground squirrel,
27 chipmunk, jackrabbit, marmot, opossum, porcupine, crow, and prairie dog;
- 28 (22) "Resident," a person having a domicile within this state for at least ninety
29 consecutive days immediately preceding the date of application for, purchasing, or
30 attempting to purchase any license required under the provisions of this title or
31 rules of the commission, who makes no claim of residency in any other state or
32 foreign country for any purpose, and other than for a person described in § 41-1-
33 1.1, claims no resident hunting, fishing, or trapping privileges in any other state or
34 foreign country, and prior to any application for any license, transfers to this state
35 the person's driver's license and motor vehicle registrations;

- 1 (23) "Sell" and "sale," any sale or offer to sell or have in possession with intent to sell,
2 use, or dispose of;
- 3 (24) "Small game," anatidae, commonly known as swans, geese, brants, merganser,
4 and river and sea ducks; the rallidae, commonly known as rails, coots, and
5 gallinule; the limicolae, referring specifically to shore birds, plover, snipe, and
6 woodcock; the gruidae, commonly known as sandhill crane; the columbidae,
7 commonly known as the mourning dove; the gallinae, commonly known as grouse,
8 prairie chickens, pheasants, partridges, and quail but does not include wild turkeys;
9 cottontail rabbit; and fox, grey and red squirrel. The term includes facsimiles of
10 small game used for law enforcement purposes;
- 11 (25) "Trapping," the taking or the attempting to take of any wild animals by means of
12 setting or operating of any device, mechanism, or contraption that is designed,
13 built, or made to close upon, hold fast, or otherwise capture a wild animal or
14 animals. If the word, trap, is used as a verb, it has the same meaning as the word,
15 trapping;
- 16 (26) "Trout streams" or "trout waters," all waters and streams or portions of streams
17 which contain trout;
- 18 (27) "Waters of the state," all the boundary waters of the state, and the provisions of
19 this title are deemed to extend to and be in force and effect over and upon and in
20 all thereof, unless otherwise expressly provided; and
- 21 (28) "Wild animal," any mammal, bird, fish, or other creature of a wild nature endowed
22 with sensation and the power of voluntary motion.