

TITLE SIX

TRAFFIC CODE

Chapter 1-----Driving Under the Influence

Chapter 2-----Reckless Driving

Chapter 3-----Exhibition Driving

Chapter 4-----Driving While Suspended

Chapter 5-----South Dakota Motor Vehicle and Traffic Law Incorporated into Tribal Code

CHAPTER ONE

DRIVING UNDER THE INFLUENCE

6-1-1 Driving or Physical Control:

A person may not drive or be in actual physical control of any vehicle while:

- (1) There is 0.10 percent or more by weight of alcohol in his blood as shown by chemical analysis of his breath, blood or other bodily substance;
- (2) Under the influence of an alcoholic beverage;
- (3) Under the influence of marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving; or
- (4) Under the combined influence of an alcohol beverage and marijuana or any controlled drug or substance to a degree which renders him incapable of safely driving.

6-1-2 First Offense:

If conviction for a violation of 6-1-1 is for a first offense, the person so convicted is guilty of a Class B offense and shall be prohibited from operating a motor vehicle upon the public highways of the Rosebud Reservation for a period of thirty (30) days.

6-1-3 Subsequent Offenses:

Prosecution of any person for a violation of 6-1-1 shall be a Class A offense if such person has been previously convicted under said paragraph in the past three (3) year period, and any defendant so convicted shall have their driving privileges on the Rosebud Reservation unconditionally revoked for a period of one (1) year in addition to any other sentence that may be imposed by the Court.

- (1) In any prosecution brought pursuant to the provisions of this section the Complaint shall allege, in addition to the Principal offense, all former convictions under this section.
- (2) Any person who has had his driving privileges revoked or suspended pursuant to the provisions of this section shall be required to surrender to the Court, any valid drivers license that has been issued to him by any governmental authority. The Court shall retain possession of such drivers license during the period of suspension or revocation.

6-1-4 Presumptions arising from chemical analysis of body fluids:

In any criminal prosecution for a violation of 6-1-1 relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, breath, or other bodily substance shall give rise to the following presumptions:

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

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

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

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

6-1-5 Operation of vehicle as consent to chemical test:

Any person who operates any vehicle upon the Rosebud Reservation is deemed to have given his consent to a chemical analysis of his blood, breath or other bodily substance to determine the amount of alcohol in his blood, and to determine the presence of marijuana or any controlled drug or substance, provided that the test is administered at the direction of a law enforcement officer having lawfully arrested the person for violation of 6-1-1.

The person shall be requested by the officer to submit to the analysis and shall be advised by the officer of his right to refuse to submit to the analysis and the provisions of 6-1-6 in the event of a refusal with respect to the revocation of the person's driving license.

6-1-6 Revocation of license or privilege after refusal of test:

Any person described in 6-1-5 not given a chemical analysis because of his right to refuse the test may demand a hearing before the Tribal Court before further action is taken under this section. If the Court finds that the law enforcement officer complied with the law and the refusal was made by the person, the Court shall revoke that person's license to drive for one (1) year.

6-1-7 Persons authorized to withdraw blood for test:

Only a physician, laboratory technician, registered nurse, physician's assistant, medical technician or medical technologist acting at the request of a law enforcement officer can withdraw blood for the purpose of determining the alcoholic content therein. This limitation does not apply to the taking of a breath or other bodily substance specimen. Such authorized persons are not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawn is administered with usual and ordinary care.

CHAPTER TWO

RECKLESS DRIVING:

6-2-1 Definition of Reckless Driving:

Any person who drives any vehicle upon a highway carelessly and heedlessly in disregard of the rights or safety of others, or without due caution and circumspection and at a speed for in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving. Reckless driving is a Class B offense.

- (1) If a conviction is a second or a subsequent Reckless Driving Offense within a *two*
- (2) year period, such person shall be guilty of a Class A offense and the Court shall make an Order prohibiting such person from driving on the Rosebud Reservation for a period of thirty (30) days. The Court may, in its discretion extend such period, not to exceed one (1) year.

CHAPTER THREE

EXHIBITION DRIVING:

6-3-1 Definition of Exhibition Driving:

Any person who drives any vehicle within the Rosebud Reservation in such a manner as to cause or create unnecessary engine noise, tire squeal, skid or slide upon acceleration or stopping, simulate a temporary race, cause a vehicle to sway unnecessarily, or make abrupt and unnecessary short skidding turns and/or circles or tracks upon the public streets, highways or alleys shall be guilty of exhibition driving. Exhibition driving shall be a Class C offense.

CHAPTER FOUR

DRIVING WHILE SUSPENDED:

6-4-1 Any person who drives a motor vehicle upon a public street or highway on the Rosebud Reservation at a time when his privilege to do so is cancelled, suspended or revoked by the Tribal Court shall be guilty of a Class B offense.

(1) Upon a person being convicted under the provisions of this section, the Court shall, in addition to any other penalty imposed, extend the period of suspension for an additional like period.

CHAPTER FIVE

SOUTH DAKOTA MOTOR VEHICLE AND TRAFFIC LAWS INCORPORATED INTO TRIBAL CODE:

6-5-1 The following chapters of the South Dakota Codified Laws (SDCL) as presently constituted or as hereafter amended shall be and are hereby incorporated into the Tribal Traffic Code and shall apply to all persons subject to the jurisdiction of the Tribal Court. Amendments, additions or deletions to or from such provisions made by the State Legislature after the enactment of this Code shall become a part hereof unless the Tribal Council provides otherwise. Chapter 32-3; 32-5; 32-12; 32-14; 32-15; 32-16; 32-17; 32-18; 32-19; 32-20; 32-20A; 32-22; 32-25; 32-26; 32-27; 32-28; 32-29; 32-30; 32-31; 32-32; 32-34;

6-5-2 Nothing contained herein shall be construed as a limitation on the Tribal Council's authority to enact legislation for the control of traffic or the regulation of vehicles and their use on the Rosebud Sioux Reservation. Any provisions in the South Dakota Codified Laws, which by their nature, do not apply to the Rosebud Sioux Tribe or to the Reservation are not incorporated herein.