

## TITLE SIX

### TRAFFIC CODE

#### CHAPTER 1 – DRIVING UNDER THE INFLUENCE

- 6-1-1. Driving or physical control
- 6-1-2. First offense
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- 6-1-5. Operation of vehicle a consent to chemical test
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- 6-1-7. Person authorized to withdraw blood for test

##### **6-1-1. DRIVING OR PHYSICAL CONTROL.**

A person may not drive or be in actual 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 violation of 6-1-1 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 government 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 the time in excess of five hundredths but less than ten hundredths percent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption 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 the 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.

**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 pay damages to the party from whom the blood sample is withdrawn if the withdrawn is administered with usual and ordinary care.

**CHAPTER 2 – RECKLESS DRIVING**

6-2-1. Reckless driving

**6-2-1. DEFINITION OF RECKLESS DRIVING.**

Any person who drives any vehicle upon a highway carelessly and needlessly in disregard of the rights of safety of others, or without due caution and circumspection and at a speed, or in a manner so as to endanger or be likely to endanger any person or property, is guilty of reckless driving. **Reckless 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 (3) days. The Court may, in its discretion extend such period, not to exceed one (1) year.

**CHAPTER 3 – EXHIBITION DRIVING**

6-3-1. 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 4 – DRIVING WHILE SUSPENDED.**

6-4-1. Driving while suspended

**6-4-1. DRIVING WHILE SUSPENDED.**

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 5 – SOUTH DAKOTA MOTOR VEHICLE AND TRAFFIC LAWS**

6-5-1. South Dakota Codified Laws  
6-5-2. Limitation on the Tribal Council's authority

**6-5-1. SOUTH DAKOTA MOTOR VEHICLE AND TRAFFIC LAWS INCORPORATED INTO TRIBAL CODE.**

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 part hereof unless the Tribal Council provides otherwise. Chapters:

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

32-3 .....TITLE REGISTRATION, LIENS AND TRANSFERS  
32-5.....ANNUAL REGISTRATION AND LICENSE PLATES  
32-12.....DRIVER LICENSES AND PERMITS  
32-14.....TRAFFIC REGULATION GENERALLY  
32-15.....VEHICLE AND ACCESSORY SPECIFICATIONS  
32-16.....INTERSTATE VEHICLE EQUIPMENT SAFETY COMPACT (REPEALED)  
32-17.....VEHICLE LIGHTS AND FLARES  
32-18.....BRAKES AND BRAKE FLUID  
32-19.....WHEELS, TIRES, AND SPECIAL VEHICLES  
32-20.....MOTORCYCLE REGULATION  
32-20A.....SNOWMOBILE OPERATION  
32-22.....WEIGHT, SIZE AND LOAD RESTRICTIONS  
32-25.....SPEED REGULATION  
32-26.....RULES OF THE ROAD  
32-27.....PEDESTRIANS' RIGHTS AND DUTIES  
32-28.....TRAFFIC CONTROL DEVICES  
32-29.....REQUIRED STOPS  
32-30.....STOPPING AND PARKING RESTRICTIONS  
32-31.....EMERGENCY VEHICLES  
32-32.....SCHOOL BUSES  
32-34.....ACCIDENTS AND ACCIDENT REPORTS

**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 the Reservation are not incorporated herein.

**CHAPTER 6 – RESERVED**

**CHAPTER 7 – SAFETY BELT SYSTEM USAGE IN PASSENGER VEHICLES**

6-7-1.	Use required-public highways-all passengers - <b>Amendment</b>
6-7-2.	Passenger vehicle defined - <b>Amendment</b>
6-7-3.	Exceptions to use of safety belts - <b>Amendment</b>

6-7-4.	Failure to comply-evidence - <b>Amendment</b>
6-7-5.	Penalties - <b>Amendment</b>

**6-7-1. USE REQUIRED-PUBLIC HIGHWAYS-ALL PASSENGERS.** Every operator and passenger of a passenger vehicle operated on a public highway within the jurisdiction of the Rosebud Sioux Tribe shall wear a properly adjusted and fastened safety seat belt system, required to be installed in the passenger vehicle when manufactured pursuant to Federal Motor Vehicle Safety Standard Number 208 (49 C.F.R. 517.208) in effect January 1, 1989, at all times when the vehicle is in forward motion. The driver of the passenger vehicle shall secure or cause to be secured a properly adjusted and fastened safety seat belt system on any passenger in the vehicle who is at least five years of age but younger than eighteen years of age.

**6-7-2. PASSENGER VEHICLE DEFINED.** A passenger vehicle is any self-propelled vehicle intended primarily for use and operation on the public highway including passenger cars, station wagons, vans, taxicabs, emergency vehicle, motor homes, truck and pickups. The term does not include motorcycles, motor scooters, motor bicycles, motorized bicycles, passenger buses, and school buses. The term also does not include farm tractors and implements of husbandry designated primarily or exclusively for use in agricultural operations.

**6-7-3. EXCEPTIONS TO USE OF SAFETY BELTS.**

- (1) Any occupant of a passenger vehicle manufactured before September 1, 1973;
- (2) A person riding in a seat in which all the seating positions equipped with safety belts are occupied;
- (3) Any occupant of a passenger vehicle who possesses a written statement from a doctor licensed under SDCL 36-4 and 36-5 that the individual is unable for medical reasons to wear a safety seat belt system;
- (4) A person who is actually engages in work that requires the person to alight from and reenter a motor vehicle at frequent intervals and who, while engaged in that work, does not drive or travel in that vehicle at a speed exceeding 25 miles per hours;
- (5) Any occupant of a vehicle not equipped with a safety seat belt system because federal law does not require that vehicle to be so equipped; or
- (6) Any rural carrier of the United States Postal Service while serving his rural postal

route or any person delivering newspapers or periodicals on an assigned home delivery route.

**6-7-4. FAILURE TO COMPLY-EVIDENCE.**

Failure to comply with the provisions of this chapter does not constitute contributory negligence, comparative negligence or assumption of the risk. Failure to comply with the provisions of this charter may not be introduced as evidence in any criminal litigation other than a prosecution under this chapter or in any civil litigation on the issue of injuries or on the issue of mitigation of damages.

**6-7-5. PENALTIES.** Violation of this Chapter will be subject to the following:

(1) 1<sup>st</sup> Offense driver and passenger who fails to fasten own seat belts, **each fine assessed at \$20.00**

(2) 2<sup>nd</sup> and subsequent offense, driver and passenger who fail to fasten own seat belts, **fine assessed at \$20.00**