

AN ACT

ENTITLED, An Act to codify the list of navigable streams requiring gates.

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

Section 1. That § 43-17-34 be amended to read:

43-17-34. A stream, or portion of a stream, is navigable if it can support a vessel capable of carrying one or more persons throughout the period between the first of May to the thirtieth of September, inclusive, in two out of every ten years. A dry draw, as defined in § 46-1-6, is not navigable. This section does not apply to any stream or portion of a stream which is navigable pursuant to federal law. The provisions of §§ 43-17-34 to 43-17-36, inclusive, and § 43-17-38 do not grant, create, recognize, convey, remove, or diminish any right or title to property. The provisions of this section apply only to the implementation of §§ 43-17-35 and 43-17-38, inclusive.

Section 2. That § 43-17-37 be repealed.

Section 3. That § 43-17-38 be amended to read:

43-17-38. A gate or opening constructed pursuant to § 43-17-36 is required in any fence that may be constructed across any of the following streams or portions of such streams:

- (1) Big Sioux River from the Grant-Codington County boundary to a point five miles north of the Missouri River in Union County;
- (2) Turtle creek, from Highway 26 to the James River, located in Spink County;
- (3) Elm River, from Elm Lake to the James River, located in Brown County;
- (4) Moccasin Creek, from 18th Avenue southwest to 8th Avenue northwest in the City of Aberdeen, located in Brown County;
- (5) Flandreau Creek, from the Minnesota state boundary to the Big Sioux River, located in Moody County;
- (6) Vermillion River, from Lake Vermillion to the Missouri River;

- (7) East fork of the Vermillion River, from Interstate 90 to Lake Vermillion, located in McCook County;
- (8) Splitrock Creek, from the Minnesota state boundary to the Big Sioux River, located in Minnehaha County;
- (9) Firesteel Creek, that portion located in Davison County;
- (10) Little White River, from the Bennett-Todd County boundary to the White River, located in Todd and Mellette Counties;
- (11) White River, from the Nebraska state boundary to the Missouri River;
- (12) Bad River, from the Stanley-Jones County boundary to the Missouri River, located in Stanley County;
- (13) Cheyenne River, from Hat Creek to the Angostura Dam in Fall River County, and from Custer-Fall River County boundary to Highway 44 in Pennington County, and from the confluence of the Belle Fourche-Cheyenne Rivers to the Missouri River;
- (14) Moreau River, from Highway 63 to the Missouri River;
- (15) Grand River, from Shadehill Reservoir to the Missouri River; and
- (16) Redwater River, from Highway 85 to the Belle Fourche River, located in Butte County.

Because the Missouri River, James River, Boise des Sioux River, and the lower five miles of the Big Sioux River have been designated as navigable pursuant to federal law, this chapter does not permit fencing, with or without gates, across the federally-navigable portions of these rivers.

The public's right to the use of such designated streams as public highways pursuant to § 43-17-2 may be impaired if a gate or opening is not provided in each fence across the streams. Construction of a fence in violation of this section is a Class 2 misdemeanor.

The public's interest in or right to use other streams navigable pursuant to § 43-17-34 but not designated pursuant to this section is not impaired or unduly restricted if fences crossing such other

navigable streams are not provided with a gate or opening. This does not diminish the public's interest in or right to use streams that are navigable pursuant to § 43-17-34 but that are not designated pursuant to this section.

Section 4. That § 43-17-39 be repealed.

Section 5. That ARSD 74:02:10:04 be repealed.

Section 6. That ARSD 74:02:10:05 be repealed.

Section 7. That ARSD 74:02:10:06 be repealed.

Section 8. That ARSD 74:02:10:07 be repealed.

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I certify that the attached Act
originated in the

HOUSE as Bill No. 1082

Chief Clerk

Speaker of the House

Attest:

Chief Clerk

President of the Senate

Attest:

Secretary of the Senate

House Bill No. 1082

File No. _____

Chapter No. _____

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Received at this Executive Office
this _____ day of _____ ,

20____ at _____ M.

By _____
for the Governor

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The attached Act is hereby
approved this _____ day of
_____, A.D., 20____

Governor

=====
STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed _____, 20____
at _____ o'clock __ M.

Secretary of State

By _____
Asst. Secretary of State