

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

456J0181

## SENATE BILL NO. 74

Introduced by: Senators McCracken, Bogue, Kelly, and Sutton (Dan) and Representatives  
Konold, Frost, Fryslie, Gassman, Hennies, Lange, and LaRue

1 FOR AN ACT ENTITLED, An Act to grant counties and townships the authority to defray the  
2 cost of abating a public nuisance and to increase the penalty for failing to abate certain  
3 public nuisances.

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

5 Section 1. That § 21-10-6 be amended to read as follows:

6 21-10-6. A public nuisance may be abated without civil action by any public body or officer  
7 as authorized thereto by law. Any private person may likewise abate a public nuisance which  
8 ~~is specially injurious to him or any private nuisance injurious to him in any manner by~~  
9 ~~removing, or, if necessary, destroying that which constitutes the nuisance, without committing~~  
10 ~~a breach of the peace or doing unnecessary injury. If a private nuisance results from a mere~~  
11 ~~omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable~~  
12 ~~notice shall be given to him before entering to abate it. Every municipality, county, or township~~  
13 may defray the cost of abating a public nuisance by taxing the cost thereof by special assessment  
14 against the real property on which the nuisance occurred. ~~When~~ If the nuisance abated is an  
15 unsafe or dilapidated building, junk, trash, debris, or similar nuisance arising from the condition



1 of the property, the municipality, county, or township may commence a civil action against the  
2 owner of the real property for its costs of abatement in lieu of taxing the cost by special  
3 assessment.

4 Any private person may also abate a public nuisance which is specially injurious to such  
5 person or any private nuisance injurious to such person by removing or if necessary destroying  
6 that which constitutes the nuisance without committing a breach of the peace or doing  
7 unnecessary injury. If a private nuisance results from a mere omission of the wrongdoer, and  
8 cannot be abated without entering upon the wrongdoer's land, reasonable notice shall be given  
9 to the wrongdoer before entering to abate it.

10 Section 2. That § 22-36-1 be amended to read as follows:

11 22-36-1. Any person who maintains or commits any public nuisance, the punishment for  
12 which is not otherwise prescribed, or who intentionally does not perform any legal duty relating  
13 to the removal of a public nuisance, is guilty of a Class 2 misdemeanor. However, if any person  
14 has been served with personal notice by a law enforcement agency concerning the condition of  
15 such person's property and that person fails to abate the public nuisance within sixty days of  
16 receipt of the personal notice, such person is guilty of a Class 1 misdemeanor.