1. **Minimum liability limits**

$25,000 because of bodily injury to one person in any one accident, $50,000 because of bodily injury or death of two or more persons in one accident and $25,000 because of injury to or destruction of property of others in any one accident.

2. **Negligence laws (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)**

In all actions brought to recover damages for injuries to a person or to that person’s property caused by the negligence of another, the fact that the plaintiff may have been guilty of contributory negligence does not bar a recovery when the contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant, but in such case, the damages shall be reduced in proportion to the amount of the plaintiff’s contributory negligence. Notwithstanding *Woods v. City of Crooks*, 559 N.W.2d 558 (SD 1997), the determination of whether the contributory negligence of the plaintiff was slight in comparison with the negligence of the defendant shall be made without disclosing any determination of percentage of the plaintiff’s fault by special interrogatory.

3. **Bodily Injury Statute of Limitations**

The statute of limitations is three (3) years generally, but six (6) years if the action for personal injury is based on strict liability.

4. **Property Damage Statute of Limitations**

Six (6) years.

5. **Are punitive damages insurable in the jurisdiction?**

The issue is somewhat unclear in South Dakota. In *Ft. Pierre v. United Fire & Cas. Co.*, 463 N.W.2d 845, 849 (S.D. 1990), the South Dakota Supreme Court stated: “Were a person able to insure himself against [the] economic consequences of his intentional wrongdoing, the deterrence attributable to financial responsibility would be missing.” However, in *Dairyland Ins.*
Co v. Wyant, 474 N.W. 2d 514, 516 (S.D. 1991) the Court decided this “statement could be considered dicta because the Ft. Pierre majority already reached the same result in the case under a different rationale.” The Court then left the issue for another day. Id.

6. **Is there an intrafamily immunity defense?**

   No.

7. **Is there a bodily injury damage threshold? If so, what is it?**

   No.

8. **What are the quick rules on Subrogation MP/PIP?**

   An insurer is entitled to both contractual and equitable subrogation rights.

9. **Are there no fault laws in the jurisdiction?**

   Yes. South Dakota is an “add-on” state, meaning it allows PIP benefits to be purchased by the policyholder in varied amounts but does not restrict third-party lawsuits.

10. **Is the customer’s insurance primary?**

    Yes, if PIP benefits are applicable.

11. **Is there a seat belt defense?**

    Nonuse of a seat belt is not considered for purposes of contributory negligence, comparative negligence or assumption of the risk. Evidence of use or nonuse is not admissible in the trial of any civil action.

12. **Is there a last clear chance defense?**

    Yes. The plaintiff may recover despite his own negligence if the defendant’s negligent act was the final, decisive cause of the accident.

13. **Is there an assumption of risk defense?**

    Yes.

14. **Is there a UM requirement?**

    There is a UM requirement for all vehicles except for those that are government-owned.
15. Is there a physical contact requirement?
   No.

16. Is there a mandatory ADR requirement?
   No.

17. Are agreements reached at a mediation enforceable?
   Yes.

18. What is the standard of review for a new trial?
   Whether a new trial should be granted is left to the sound judicial discretion of the trial court, and the Supreme Court will not disturb the trial court’s decision absent a clear showing of abuse of discretion.

19. Is pre-judgment interest collectable? If so, at what rate?
   Yes. Pre-judgment interest can be collected at the rate contracted for if a contract exists; otherwise, if pre-judgment interest is awarded it shall be at the Category B rate of interest specified in § 54-3-16, which is currently 10 percent.

20. Is post judgment interest collectable? If so, at what rate?
   Interest is payable on all judgments and statutory liens, exclusive of real estate mortgages and security agreements under Title 57A, and exclusive of support debts or judgments under § 25-7A-14, at the Category B rate of interest as established in § 54-3-16 from and after the date of judgment and date of filing statutory lien.

21. Is there a workers’ compensation exclusive remedy defense?
   Yes.

22. Is the doctrine of joint and several liability applicable?
   Yes, but South Dakota follows a form of modified joint and several liability. If a defendant is responsible for less than 50 percent of the total fault allocated to all parties, the defendant may not be jointly and severally liable for more than twice his share of fault.

23. Is there a self critical analysis privilege?
   No.
24. Is accident reconstruction data admissible?

Yes.

25. What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?

Courts in South Dakota apply the Collateral Source Rule, under which total or partial compensation received by the injured party, independent of the tortfeasor, does not operate to reduce damages recoverable from the tortfeasor. Therefore, the determination of the reasonable value of medical services begins with the amount billed.

26. What is the jurisdiction’s rule on offers of judgment?

At any time more than ten days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within ten days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. If the offer is rejected and if the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer.

27. What is the jurisdiction’s rule on spoliation of evidence?

It is a general rule that the intentional spoliation or destruction of evidence relevant to a case raises a presumption, or an inference, that this evidence would have been unfavorable to the case of the spoliator; such a presumption or inference arises, however, only where the spoliation or destruction was intentional and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent.

28. Are there damages caps in place?

No.

29. Is CSA 2010 data admissible?

Unknown.

30. Briefly, does the jurisdiction have any unique rules on electronic discovery?

No.

31. Is the sudden emergency doctrine recognized in the jurisdiction?

Yes.
32. Are there any rules prohibiting or limiting the use of the reptile theory at trial?

Statements meant to inflame the jury go beyond summarizing the evidence and are designed to appeal to emotion and prejudice. These kinds of arguments are improper as they cut to the heart of juror independence. Lawyers are allowed to present cases vigorously, but if they make statements meant only to inflame the jury, the appellate court may reverse and order a new trial if they find the improper argument had some effect upon the verdict.

This issue has not been directly addressed in South Dakota. However, statements meant to inflame the jury are improper and, if not excluded, may lead to reversal on appeal. Although these issues have not been directly addressed in South Dakota, South Dakota Rules of Evidence 401, 403, and 404 are all generally applicable when the plaintiff uses the reptile theory at trial. The South Dakota rules, like the federal rules, allow the court to exclude unduly prejudicial evidence, as well as evidence of prior bad acts.

33. What are the jurisdictional limits of the jurisdiction’s civil courts – i.e. Small Claims, District Court, Superior Court?

Small claims court claims may not exceed $12,000. South Dakota’s Circuit Courts are courts of general jurisdiction with limited exceptions.

34. Are state judges elected or appointed?

Judges are elected to eight year terms, the governor appoints judges to fill initial terms with the advice of the judicial qualifications commission.