

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0436

HOUSE BILL NO. 1120

Introduced by: Representatives Rounds, Gillespie, Hargens, and O'Brien and Senators Moore, Gray, and Schoenbeck

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the operation of a
2 snowmobile or boat while under the influence.

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

4 Section 1. That § 32-20A-14 be amended to read as follows:

5 32-20A-14. The operator of a snowmobile ~~shall be~~ is deemed the driver or operator of a
6 ~~motor~~ vehicle within the meaning of chapter 32-23 and is subject to all the provisions of chapter
7 32-23 relating to driving while under the influence of ~~intoxicating liquor, drugs, or otherwise~~
8 ~~therein provided~~ and is punishable ~~thereunder~~ under chapter 32-23 for any violation of that
9 chapter.

10 Section 2. That chapter 42-8 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 The operator of a boat is deemed the driver or operator of a vehicle within the meaning of
13 chapter 32-23 and is subject to all the provisions of chapter 32-23 relating to driving while under
14 the influence and is punishable under chapter 32-23 for any violation of that chapter.

15 Section 3. That § 42-8-45 be repealed.



1 ~~42-8-45. No person may operate a boat while underway on the public waters of the state~~
2 ~~while:~~

3 ~~(1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown~~
4 ~~by chemical analysis of that person's breath, blood, or other bodily substance;~~

5 ~~(2) Under the influence of an alcoholic beverage;~~

6 ~~(3) Under the influence of marijuana or any controlled drug or substance to a degree~~
7 ~~which renders the person incapable of safely driving or operating such boat; or~~

8 ~~(4) Under the combined influence of an alcoholic beverage and marijuana or any~~
9 ~~controlled drug or substance to a degree which renders the person incapable of safely~~
10 ~~driving or operating such boat.~~

11 ~~Any violation of this section is a Class 1 misdemeanor.~~

12 Section 4. That § 42-8-45.1 be repealed.

13 ~~42-8-45.1. A law enforcement officer may, without a warrant, arrest a person for a violation~~
14 ~~of the provisions of § 42-8-45 if he has probable cause to believe that the person to be arrested~~
15 ~~has been involved in an accident on the public waters of the state and has violated the provisions~~
16 ~~of § 42-8-45 and that the violation occurred prior to or immediately following the accident.~~

17 Section 5. That § 42-8-45.2 be repealed.

18 ~~42-8-45.2. Any person operating a boat while underway on the public waters of the state~~
19 ~~which has been involved in an accident or which is operated in violation of any of the provisions~~
20 ~~of this chapter shall, at the request of a law enforcement officer, submit to a breath test to be~~
21 ~~administered by the officer. If the test indicates that the person has consumed alcohol, the law~~
22 ~~enforcement officer may require the person to submit to a chemical test in the manner set forth~~
23 ~~in this chapter.~~

24 Section 6. That § 42-8-45.3 be repealed.

1 ~~42-8-45.3. The fact that any person charged with a violation of § 42-8-45 may use a drug~~
2 ~~under the laws of this state does not constitute a defense against any charge of violating that~~
3 ~~section.~~

4 Section 7. That § 42-8-45.4 be repealed.

5 ~~42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol~~
6 ~~in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's~~
7 ~~blood, breath, or other bodily substance gives rise to the following presumptions:~~

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

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

16 ~~(3) If there was at that time eight hundredths percent or more by weight of alcohol in the~~
17 ~~defendant's blood, it is presumed that the defendant was under the influence of~~
18 ~~intoxicating liquor.~~

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

21 Section 8. That § 42-8-45.5 be repealed.

22 ~~42-8-45.5. The provisions of § 42-8-45.4 may not be construed as limiting the introduction~~
23 ~~of any other competent evidence bearing upon the question whether or not the defendant was~~
24 ~~under the influence of intoxicating liquor.~~

1 Section 9. That § 42-8-45.6 be repealed.

2 ~~—42-8-45.6. Any person who operates a boat while underway on the public waters of the state~~
3 ~~in this state is considered to have consented to the withdrawal of blood or other bodily substance~~
4 ~~and chemical analysis of such blood, breath, or other bodily substance to determine the amount~~
5 ~~of alcohol in such blood and to determine the presence of marijuana or any controlled drug or~~
6 ~~substance.~~

7 ~~—The person, operating a boat underway which has been involved in a collision or an accident~~
8 ~~resulting in bodily injury or death to any person or property damage to a boat or other property~~
9 ~~to an apparent extent of one thousand dollars or more to any one person's property or two~~
10 ~~thousand dollars or more in any one accident, shall submit to the withdrawal of blood or other~~
11 ~~bodily substance for chemical analysis or chemical analysis of the person's breath. The officer~~
12 ~~shall advise the person of the right to have an additional chemical analysis performed by a~~
13 ~~technician of his or her own choosing at his or her own expense.~~

14 ~~—Any other person, operating a boat underway which has not been involved in a collision or~~
15 ~~an accident resulting in bodily injury or death to any person or property damage to a boat or~~
16 ~~other property to an apparent extent of one thousand dollars or more to any one person's~~
17 ~~property or two thousand dollars or more in any one accident, shall be requested by the officer~~
18 ~~to submit to the withdrawal of blood or other bodily substance for chemical analysis or chemical~~
19 ~~analysis of his or her breath. The officer shall advise the person that:~~

20 ~~—(1)—If he or she refuses to submit to the withdrawal or chemical analysis, no withdrawal~~
21 ~~or chemical analysis may be required;~~

22 ~~—(2)—Such refusal is admissible into evidence at trial; and~~

23 ~~—(3)—That he or she has the right to have an additional chemical analysis performed by a~~
24 ~~technician of his or her own choosing at his or her own expense.~~

1 ~~— If such person refuses to submit to chemical analysis of his or her blood, urine, breath, or~~
2 ~~other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical~~
3 ~~analysis as provided in this section, and that person subsequently stands trial for violation of~~
4 ~~§ 42-8-45, such refusal is admissible into evidence at the trial.~~

5 Section 10. That § 42-8-45.7 be repealed.

6 ~~— 42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant,~~
7 ~~phlebotomist, expanded role licensed practical nurse, medical technician, or medical~~
8 ~~technologist may withdraw blood for the purpose of determining the alcoholic content therein.~~
9 ~~This limitation does not apply to the taking of a breath or other bodily substance specimen. Such~~
10 ~~authorized persons, acting on the consent considered to have been given by the person when~~
11 ~~operating a boat while underway, and any hospital employing such persons, are not liable and~~
12 ~~may not be held to pay damages to the party from whom the blood sample is withdrawn, if the~~
13 ~~withdrawal is administered with usual and ordinary care.~~

14 Section 11. That § 42-8-45.8 be repealed.

15 ~~— 42-8-45.8. To be considered valid under the provisions of this chapter, the withdrawal or~~
16 ~~chemical analysis shall be performed at the direction of a law enforcement officer having~~
17 ~~lawfully arrested the person for violation of § 42-8-45 and the chemical test analysis of the~~
18 ~~person's breath, if one is performed, shall have been performed according to methods approved~~
19 ~~by the director of laboratories and by an individual possessing a valid permit issued by the~~
20 ~~director of laboratories for this purpose. The director of laboratories may approve satisfactory~~
21 ~~techniques or methods to ascertain the qualifications and competence of individuals to conduct~~
22 ~~such analysis and issue permits which are subject to termination or revocation at the discretion~~
23 ~~of the director of laboratories.~~

24 Section 12. That § 42-8-45.9 be repealed.

1 ~~42-8-45.9. The person tested pursuant to this chapter shall be permitted to have a physician,~~
2 ~~laboratory technician, registered nurse, physician's assistant, or medical technologist of his own~~
3 ~~choosing administer the chemical analysis in addition to the one administered at the direction~~
4 ~~of the law enforcement officer.~~

5 Section 13. That § 42-8-45.10 be repealed.

6 ~~42-8-45.10. Upon the request of the person who was tested pursuant to this chapter or upon~~
7 ~~the request of his attorney, the results of such analysis shall be made available to him or to his~~
8 ~~attorney.~~

9 Section 14. That § 42-8-45.11 be repealed.

10 ~~42-8-45.11. In the case of a conviction under this chapter, the costs accrued for the~~
11 ~~withdrawal and chemical analysis of blood or other bodily substance and witness fees and~~
12 ~~expenses in connection therewith, shall be taxed by the court as costs in the action and shall, if~~
13 ~~the county is to have a lien for fees paid to counsel for an indigent, be included in the lien filed;~~
14 ~~otherwise it shall, with other costs as the court imposes, be entered in the judgment as provided~~
15 ~~in chapter 23A-27.~~