

SENATE BILL NO. 2141

Introduced by

Transportation Committee

(At the request of the Game and Fish Department)

1 A BILL for an Act to amend and reenact subsection 2 of section 20.1-13-07, sections
2 20.1-13.1-06 and 20.1-13.1-07, subsection 5 of section 20.1-13.1-08, and section 20.1-13.1-09
3 of the North Dakota Century Code, relating to boating under the influence; to provide a penalty;
4 to provide an effective date; and to declare an emergency.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Subsection 2 of section 20.1-13-07 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 2. ~~No~~ A person may not operate any a motorboat or vessel, or manipulate any water
9 skis, a surfboard, or similar device while intoxicated or under the influence of any
10 narcotic drug, barbiturate, or marijuana. if any of the following apply:

11 a. That person has an alcohol concentration of at least ten one-hundredths of
12 one percent by weight at the time of the performance of the test within two
13 hours after the operating of a motorboat or vessel.

14 b. That person is under the influence of intoxicating liquor.

15 c. That person is under the influence of any drug or substance or combination of
16 drugs or substances to a degree which renders that person incapable of
17 safely operating a motorboat or vessel.

18 d. That person is under the combined influence of alcohol and any other drugs
19 or substances to a degree which renders that person incapable of safely
20 operating a motorboat or vessel.

21 The fact that a person charged with violating this section is or has been legally
22 entitled to use alcohol or other drugs or substances is not a defense against any
23 charge for violating this section, unless a drug which predominantly caused

1 impairment was used only as directed or cautioned by a practitioner who legally
2 prescribed or dispensed the drug to that person.

3 **SECTION 2. AMENDMENT.** Section 20.1-13.1-06 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **20.1-13.1-06. Revocation of privilege to operate motorboat or vessel upon refusal**
6 **to submit to testing.**

7 1. If a person refuses to submit to testing under section 20.1-13.1-01, no chemical
8 test may be given, but the game warden or law enforcement officer shall
9 immediately issue to that person a statement of intent to prohibit the person from
10 operating a motorboat or vessel. The statement serves as the director's official
11 notification to the person of the director's intent to prohibit the person from
12 operating a motorboat or vessel in this state and of the hearing procedures under
13 this chapter. The director, upon the receipt of the certified written report of the
14 game warden or law enforcement officer in the form required by the director,
15 forwarded by the warden or officer within five days after issuing the statement of
16 intent, showing that the warden or officer had probable cause to believe the person
17 had been operating a motorboat or vessel while in violation of section 20.1-13-07
18 or had observed that the motorboat or vessel was operated in a negligent,
19 reckless, or hazardous manner as defined by the director by rule, that the person
20 was lawfully arrested if applicable, and that the person had refused to submit to the
21 chemical test under section 20.1-13.1-01, shall prohibit the person from operating a
22 motorboat or vessel in this state for the appropriate period under this section. The
23 period for which a person is prohibited from operating a motorboat or vessel under
24 this section is:

- 25 a. ~~One year~~ Two years if the person's record shows that within the five years
26 preceding the most recent refusal under this section, the person has not been
27 prohibited from operating a motorboat or vessel for a violation of this chapter
28 or for a violation of section 20.1-13-07.
- 29 b. ~~Two~~ Three years if the person's record shows that within the five years
30 preceding the most recent refusal under this section, the person has once

- 1 been prohibited from operating a motorboat or vessel for a violation of this
2 chapter or for a violation of section 20.1-13-07.
- 3 c. ~~Three~~ Four years if the person's record shows that within the five years
4 preceding the most recent refusal under this section, the person has twice
5 been prohibited from operating a motorboat or vessel under this chapter or for
6 a violation of section 20.1-13-07, and the prohibitions resulted from at least
7 two separate arrests.
- 8 2. A person may not be prohibited from operating a motorboat or vessel under this
9 section if:
- 10 a. No administrative hearing request is made under section 20.1-13.1-08;
- 11 b. The person mails an affidavit to the director within ten days after the game
12 warden or law enforcement officer issues the statement of intent. The
13 affidavit must state that the person:
- 14 (1) Intends to voluntarily plead guilty to violating section 20.1-13-07 within
15 twenty-five days after the game warden or law enforcement officer
16 issues the statement of intent;
- 17 (2) Agrees that the person may not operate a motorboat or vessel for the
18 appropriate period;
- 19 (3) Acknowledges the right to a section 20.1-13.1-08 administrative hearing
20 and section 20.1-13.1-09 judicial review and voluntarily and knowingly
21 waives these rights; and
- 22 (4) Agrees that the person may not operate a motorboat or vessel for the
23 appropriate period as provided under this section without an
24 administrative hearing or judicial review, if the person does not plead
25 guilty within twenty-five days after the game warden or law enforcement
26 officer issues the statement of intent, or the court does not accept the
27 guilty plea, or the guilty plea is withdrawn;
- 28 c. The person pleads guilty to violating section 20.1-13-07 within twenty-five
29 days after the game warden or law enforcement officer issues the statement
30 of intent;

- 1 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
2 the director within twenty-five days after the game warden or law enforcement
3 officer issues the statement of intent; and
- 4 e. A copy of the final order or judgment of conviction evidencing the acceptance
5 of the person's guilty plea is received by the director prior to the end of the
6 prohibition from operating a motorboat or vessel.
- 7 3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to
8 violating section 20.1-13-07 to the director within ten days after it is ordered. Upon
9 receipt of the order, the director immediately shall prohibit the person from
10 operating a motorboat or vessel as provided under this section without providing an
11 administrative hearing.

12 **SECTION 3. AMENDMENT.** Section 20.1-13.1-07 of the North Dakota Century Code
13 is amended and reenacted as follows:

- 14 **20.1-13.1-07. Administrative sanction for operating motorboat or vessel while**
15 **having certain drug concentrations.** After the receipt of the certified report of a game warden
16 or a law enforcement officer and if no written request for hearing has been received from the
17 arrested person under section 20.1-13.1-08, or if that hearing is requested and the findings,
18 conclusion, and decision from the hearing confirm that the game warden or law enforcement
19 officer had probable cause to arrest the person and chemical test results show that the arrested
20 person was operating a motorboat or vessel while having an alcohol, other drug, or a
21 combination thereof concentration of at least ten one-hundredths of one percent by weight at
22 the time of the performance of a test within two hours after operating a motorboat or vessel, the
23 director shall prohibit the person from operating any motorboat or vessel in this state as follows:
- 24 1. For ~~ninety-one days~~ one year if the person's record shows that, within the five
25 years preceding the date of the arrest, the person has not previously violated
26 section 20.1-13-07 or the person has not been prohibited from operating a
27 motorboat or vessel under this chapter.
- 28 2. For ~~three hundred sixty-four days~~ two years if the person's record shows that,
29 within the five years preceding the date of the arrest, the person has once
30 previously violated section 20.1-13-07 or the person has once been prohibited from
31 operating a motorboat or vessel under this chapter.

1 3. For ~~two~~ three years if the person's record shows that within the five years
2 preceding the date of the arrest, the person has twice been prohibited from
3 operating a motorboat or vessel under this chapter, or for a violation of section
4 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least
5 two separate arrests.

6 **SECTION 4. AMENDMENT.** Subsection 5 of section 20.1-13.1-08 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
9 officer's findings of fact, conclusions of law, and decision based on the findings and
10 conclusions ~~and shall immediately deliver~~ by issuing to the person a copy of the
11 decision within ten days of the conclusion of the hearing. If the hearing officer
12 does not find in favor of the person, the copy of the decision serves as the
13 director's official notification to the person that the person is prohibited from
14 operating a motorboat or vessel in this state. The hearing officer shall report the
15 findings, conclusions, and decisions to the director within ten days of the
16 conclusion of the hearing.

17 **SECTION 5. AMENDMENT.** Section 20.1-13.1-09 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **20.1-13.1-09. Judicial review.** Any person who has been prohibited from operating a
20 motorboat or vessel by the decision of the hearing officer under section 20.1-13.1-08 may
21 appeal within seven days after the date ~~of~~ the hearing officer issued the decision under section
22 20.1-13.1-08 as shown by the date of the hearing officer's decision, notwithstanding section
23 28-32-42, by serving on the director and filing a notice of appeal and specifications of error in
24 the district court in the county where the events occurred for which the demand for a chemical
25 test was made or in the county in which the administrative hearing was held. The court shall
26 set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the
27 director and to the hearing officer who rendered the decision. Neither the director nor the court
28 may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice
29 of appeal, the director or the hearing officer who rendered the decision shall file in the office of
30 the clerk of court to which the appeal is taken a certified transcript of the testimony and all other
31 proceedings. This record is the record on which the appeal must be determined. No additional

1 evidence may be heard. The court shall affirm the decision of the director or hearing officer
2 unless it finds the evidence insufficient to warrant the conclusion reached by the director or
3 hearing officer. The court may direct that the matter be returned to the director or hearing
4 officer for rehearing and the presentation of additional evidence.

5 **SECTION 6. EFFECTIVE DATE.** This Act becomes effective on May 1, 2005.

6 **SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.