

**SENATE BILL NO. 2141
with House Amendments**Fifty-ninth
Legislative Assembly
of North Dakota**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, section
2 20.1-13.1-07, subsection 5 of section 20.1-13.1-08, and section 20.1-13.1-09 of the North
3 Dakota Century Code, relating to boating under the influence; to provide a penalty; to provide
4 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 20.1-13.1-07 of the North Dakota Century Code
4 is amended and reenacted as follows:

5 **20.1-13.1-07. Administrative sanction for operating motorboat or vessel while**
6 **having certain drug concentrations.**

- 7 1. After the receipt of the certified report of a game warden or a law enforcement
8 officer and if no written request for hearing has been received from the arrested
9 person under section 20.1-13.1-08, or if that hearing is requested and the findings,
10 conclusion, and decision from the hearing confirm that the game warden or law
11 enforcement officer had probable cause to arrest the person and chemical test
12 results show that the arrested person was operating a motorboat or vessel while
13 having an alcohol, other drug, or a combination thereof concentration of at least
14 ten one-hundredths of one percent by weight at the time of the performance of a
15 test within two hours after operating a motorboat or vessel, the director shall
16 prohibit the person from operating any motorboat or vessel in this state as follows:
- 17 ~~4-~~ a. For ninety-one days if the person's record shows that, within the five years
18 preceding the date of the arrest, the person has not previously violated
19 section 20.1-13-07 or the person has not been prohibited from operating a
20 motorboat or vessel under this chapter.
- 21 ~~2-~~ b. For three hundred sixty-four days if the person's record shows that, within the
22 five years preceding the date of the arrest, the person has once previously
23 violated section 20.1-13-07 or the person has once been prohibited from
24 operating a motorboat or vessel under this chapter.
- 25 ~~3-~~ c. For two years if the person's record shows that within the five years preceding
26 the date of the arrest, the person has twice been prohibited from operating a
27 motorboat or vessel under this chapter, or for a violation of section
28 20.1-13-07, or any combination thereof, and the prohibitions resulted from at
29 least two separate arrests.
- 30 2. A person who is prohibited from operating a motorboat or a vessel under
31 subdivision a of subsection 1 shall serve the prohibition within the time period

1 between May first and October first. If the person is unable to serve the full
2 prohibition within this time period in a single year, the person shall serve the
3 remaining portion of the prohibition during the same time period in subsequent
4 years.

5 **SECTION 3. AMENDMENT.** Subsection 5 of section 20.1-13.1-08 of the North Dakota
6 Century Code is amended and reenacted as follows:

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

16 **SECTION 4. AMENDMENT.** Section 20.1-13.1-09 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **20.1-13.1-09. Judicial review.** Any person who has been prohibited from operating a
19 motorboat or vessel by the decision of the hearing officer under section 20.1-13.1-08 may
20 appeal within seven days after the date ~~of~~ the hearing officer issued the decision under section
21 20.1-13.1-08 as shown by the date of the hearing officer's decision, notwithstanding section
22 28-32-42, by serving on the director and filing a notice of appeal and specifications of error in
23 the district court in the county where the events occurred for which the demand for a chemical
24 test was made or in the county in which the administrative hearing was held. The court shall
25 set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the
26 director and to the hearing officer who rendered the decision. Neither the director nor the court
27 may stay the decision pending decision on appeal. Within fifteen days after receipt of the
28 notice of appeal, the director or the hearing officer who rendered the decision shall file in the
29 office of the clerk of court to which the appeal is taken a certified transcript of the testimony and
30 all other proceedings. This record is the record on which the appeal must be determined. No
31 additional evidence may be heard. The court shall affirm the decision of the director or hearing

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

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

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