

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

SENATE BILL NO. 2141
(Transportation Committee)
(At the request of the Game and Fish Department)

AN ACT to amend and reenact subsection 2 of section 20.1-13-07, section 20.1-13.1-07, subsection 5 of section 20.1-13.1-08, and section 20.1-13.1-09 of the North Dakota Century Code, relating to boating under the influence; to provide a penalty; to provide an effective date; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

2. ~~No~~ A person may not operate any a motorboat or vessel, or manipulate any water skis, a surfboard, or similar device while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana. if any of the following apply:
 - a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a motorboat or vessel.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel.
 - d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel.

The fact that a person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

SECTION 2. AMENDMENT. Section 20.1-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After the receipt of the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 20.1-13.1-08, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had probable cause to arrest the person and chemical test results show that the arrested person was operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after operating a motorboat or vessel, the director shall prohibit the person from operating any motorboat or vessel in this state as follows:

1. a. For ninety-one days if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-13-07 or the person has not been prohibited from operating a motorboat or vessel under this chapter.
 2. b. For three hundred sixty-four days if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-13-07 or the person has once been prohibited from operating a motorboat or vessel under this chapter.
 3. c. For two years if the person's record shows that within the five years preceding the date of the arrest, the person has twice been prohibited from operating a motorboat or vessel under this chapter, or for a violation of section 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least two separate arrests.
2. A person who is prohibited from operating a motorboat or a vessel under subdivision a of subsection 1 shall serve the prohibition within the time period between May first and October first. If the person is unable to serve the full prohibition within this time period in a single year, the person shall serve the remaining portion of the prohibition during the same time period in subsequent years.

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

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

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

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

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

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

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2141 and that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 46 Nays 0 Absent 1

President of the Senate

Secretary of the Senate

This certifies that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 74 Nays 17 Absent 3

Speaker of the House

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at ___ o'clock _____ M.

Secretary of State