

# State of South Dakota

EIGHTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2012

400T0158

## SENATE BILL NO. 10

Introduced by: The Committee on Judiciary at the request of the Department of Game, Fish  
and Parks

1 FOR AN ACT ENTITLED, An Act to revise certain provisions pertaining to boating while  
2 under the influence.

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

4 Section 1. That § 42-8-45 be amended to read as follows:

5 42-8-45. No person may operate a boat while underway on the public waters of the state  
6 while:

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

9 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or  
10 substance not obtained pursuant to a valid prescription, or any combination of an  
11 alcoholic beverage, marijuana, or such controlled drug or substance;

12 (3) Under the influence of ~~marijuana~~ or any controlled drug or substance obtained  
13 pursuant to a valid prescription, or any other substance, to a degree which renders the  
14 person incapable of safely driving or operating such boat; ~~or~~

15 (4) Under the combined influence of an alcoholic beverage and ~~marijuana~~ or any



1 controlled drug or substance obtained pursuant to a valid prescription, or any  
2 combination of an alcoholic beverage, to a degree which renders the person incapable  
3 of safely driving or operating such boat; or

4 (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the  
5 body as prohibited by § 22-42-15.

6 Any violation of this section is a Class 1 misdemeanor.

7 Section 2. That § 42-8-45.1 be amended to read as follows:

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

13 Section 3. That § 42-8-45.3 be amended to read as follows:

14 42-8-45.3. The fact that any person charged with a violation of § 42-8-45 ~~may use~~ is or has  
15 been prescribed a drug under the laws of this state ~~does is not constitute~~ a defense against any  
16 charge of violating ~~that section~~ § 42-8-45.

17 Section 4. That § 42-8-45.4 be amended to read as follows:

18 42-8-45.4. In any criminal prosecution for a violation of § 42-8-45, the amount of alcohol  
19 in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's  
20 blood, breath, or other bodily substance gives rise to the following presumptions:

21 (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
22 defendant's blood, ~~it is presumed~~ a presumption arises that the defendant was not  
23 under the influence of ~~intoxicating liquor~~ an alcoholic beverage;

24 (2) If there was at that time in excess of five hundredths percent but less than eight

1 hundredths percent by weight of alcohol in the defendant's blood, such fact does not  
2 give rise to any presumption that the defendant was or was not under the influence  
3 of ~~intoxicating liquor~~ an alcoholic beverage, but such fact may be considered with  
4 other competent evidence in determining the guilt or innocence of the defendant; and

5 (3) If there was at that time eight hundredths percent or more by weight of alcohol in the  
6 defendant's blood, ~~it is presumed~~ a presumption arises that the defendant was under  
7 the influence of ~~intoxicating liquor~~ an alcoholic beverage.

8 Percent by weight of alcohol in the blood ~~shall be~~ is based upon milligrams of alcohol per  
9 1.0 cubic ~~centimeters~~ centimeter of whole blood or 2100 cubic centimeters of deep lung breath.

10 Section 5. That § 42-8-45.5 be amended to read as follows:

11 42-8-45.5. The provisions of § 42-8-45.4 ~~may not be construed as limiting~~ do not limit the  
12 introduction of any other competent evidence bearing upon the question whether or not the  
13 defendant was under the influence of ~~intoxicating liquor~~ an alcoholic beverage.

14 Section 6. That § 42-8-45.6 be amended to read as follows:

15 42-8-45.6. Any person who operates a boat while underway on the public waters of the state  
16 in this state is considered to have ~~consented~~ given consent to the withdrawal of blood or other  
17 bodily substance and chemical analysis of ~~such~~ the person's blood, breath, or other bodily  
18 substance to determine the amount of alcohol in ~~such~~ the person's blood and to determine the  
19 presence of marijuana or any controlled drug or substance or any substance ingested, inhaled,  
20 or otherwise taken into the body as prohibited by § 22-42-15 or any other substance that may  
21 render a person incapable of safely operating a boat. The arresting law enforcement officer may,  
22 subsequent to the arrest of any operator for a violation of § 42-8-45, require the operator to  
23 submit to the withdrawal of blood or other bodily substances as evidence.

24 ~~—The person, operating a boat underway which has been involved in a collision or an accident~~

1 resulting in bodily injury or death to any person or property damage to a boat or other property  
2 to an apparent extent of one thousand dollars or more to any one person's property or two  
3 thousand dollars or more in any one accident, shall submit to the withdrawal of blood or other  
4 bodily substance for chemical analysis or chemical analysis of the person's breath. The officer  
5 shall advise the person of the right to have an additional chemical analysis performed by a  
6 technician of his or her own choosing at his or her own expense.

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

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

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

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

18 ~~If such person refuses to submit to chemical analysis of his or her blood, urine, breath, or~~  
19 ~~other bodily substance, or allow the withdrawal of blood or other bodily substance for chemical~~  
20 ~~analysis as provided in this section, and that person subsequently stands trial for violation of~~  
21 ~~§ 42-8-45, such refusal is admissible into evidence at the trial.~~

22 Section 7. That § 42-8-45.9 be amended to read as follows:

23 42-8-45.9. The Any person tested pursuant to this chapter shall be permitted to may have  
24 a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist

1 of ~~his~~ the person's own choosing administer the chemical analysis in addition to the one  
2 administered at the direction of the law enforcement officer.

3 Section 8. That § 42-8-45.10 be amended to read as follows:

4 42-8-45.10. Upon the request of ~~the~~ any person who was tested pursuant to this chapter or  
5 upon the request of ~~his~~ the person's attorney, the results of such analysis shall be made available  
6 to ~~him~~ the person or to ~~his~~ the person's attorney.

7 Section 9. That § 42-8-45.7 be amended to read as follows:

8 42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant,  
9 phlebotomist, expanded role licensed practical nurse, medical technician, or medical  
10 technologist may withdraw blood for the purpose of determining the alcoholic content ~~therein~~  
11 of the blood. This limitation does not apply to the taking of a breath or other bodily substance  
12 specimen. Such authorized persons, acting on the presumption of consent ~~considered to have~~  
13 ~~been given by the person when operating a boat while underway in § 42-8-45.6~~, and any hospital  
14 or facility employing such persons, are not liable and may not be held to pay damages to the  
15 party from whom the blood sample is withdrawn, if the withdrawal is administered with usual  
16 and ordinary care. No person authorized to withdraw blood under this section may be required  
17 or forced to withdraw blood for the purposes provided in this chapter, unless required pursuant  
18 to a written agreement.