

AN ACT

ENTITLED, An Act to revise certain provisions pertaining to boating while under the influence.

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

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

42-8-45. No person may operate a boat as defined in subdivisions 42-8-2(2b), (3), (5a), or (6) while underway on the public waters of the state while:

- (1) There is 0.08 percent or more by weight of alcohol in that person's blood as shown by chemical analysis of that person's breath, blood, or other bodily substance;
- (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or substance not obtained pursuant to a valid prescription, or any combination of an alcoholic beverage, marijuana, or such controlled drug or substance;
- (3) Under the influence of any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat;
- (4) Under the combined influence of an alcoholic beverage and any controlled drug or substance obtained pursuant to a valid prescription, or any other substance, to a degree which renders the person incapable of safely driving or operating such boat; or
- (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the body as prohibited by § 22-42-15.

Any violation of this section is a Class 1 misdemeanor.

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

42-8-45.1. A law enforcement officer may, without a warrant, arrest a person for a violation of the provisions of § 42-8-45 if the officer has probable cause to believe that the person to be arrested has been involved in an accident on the public waters of the state and has violated the provisions of

§ 42-8-45 and that the violation occurred prior to or immediately following the accident.

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

42-8-45.3. The fact that any person charged with a violation of § 42-8-45 is or has been prescribed a drug under the laws of this state is not a defense against any charge of violating § 42-8-45.

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

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

- (1) If there was at that time five hundredths percent or less by weight of alcohol in the defendant's blood, a presumption arises that the defendant was not under the influence of an alcoholic beverage;
- (2) If there was at that time in excess of five hundredths percent but less than eight hundredths percent by weight of alcohol in the defendant's blood, such fact does not give rise to any presumption that the defendant was or was not under the influence of an alcoholic beverage, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant; and
- (3) If there was at that time eight hundredths percent or more by weight of alcohol in the defendant's blood, a presumption arises that the defendant was under the influence of an alcoholic beverage.

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

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

42-8-45.5. The provisions of § 42-8-45.4 do not limit the introduction of any other competent

evidence bearing upon the question whether or not the defendant was under the influence of an alcoholic beverage.

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

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

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

42-8-45.9. Any person tested pursuant to this chapter may have a physician, laboratory technician, registered nurse, physician's assistant, or medical technologist of the person's own choosing administer the chemical analysis in addition to the one administered at the direction of the law enforcement officer.

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

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

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

42-8-45.7. Only a physician, laboratory technician, registered nurse, physician's assistant, phlebotomist, expanded role licensed practical nurse, medical technician, or medical technologist

may withdraw blood for the purpose of determining the alcoholic content of the blood. This limitation does not apply to the taking of a breath or other bodily substance specimen. Such authorized persons, acting on the presumption of consent in § 42-8-45.6, and any hospital or facility employing such persons, are not liable and may not be held to pay damages to the party from whom the blood sample is withdrawn, if the withdrawal is administered with usual and ordinary care. No person authorized to withdraw blood under this section may be required or forced to withdraw blood for the purposes provided in this chapter, unless required pursuant to a written agreement.

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I certify that the attached Act
originated in the
SENATE as Bill No. 10

\_\_\_\_\_  
Secretary of the Senate
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\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

Senate Bill No. 10  
File No. \_\_\_\_\_  
Chapter No. \_\_\_\_\_

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Received at this Executive Office
this \_\_\_\_ day of \_\_\_\_\_ ,
20\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor
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The attached Act is hereby
approved this \_\_\_\_\_ day of
\_\_\_\_\_, A.D., 20\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,
ss.
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State