



2026 South Dakota Legislature

House Bill 1120

Introduced by: **Representative Walburg**

1 **An Act to revise certain provisions related to operating a vehicle, boat, or aircraft**
 2 **while under the influence.**

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

4 **Section 1. That § 32-12A-44 be AMENDED:**

5 **32-12A-44.** No person may drive or be in actual physical control of a commercial
 6 motor vehicle while there is ~~between 0.04 and 0.08 percent~~ or more, by weight of alcohol
 7 in that the person's blood at the time, or as measured within two hours of the time, of
 8 driving or being in actual physical control of the commercial vehicle, as shown by chemical
 9 analysis of ~~that the~~ person's breath, blood, or other body substance. ~~Any~~ A violation of
 10 this section is a Class 2 misdemeanor.

11 **Section 2. That § 32-23-1 be AMENDED:**

12 **32-23-1.** No person may drive or be in actual physical control of any vehicle while:
 13 (1) There is 0.08 percent or more by weight of alcohol in ~~that the~~ the person's blood at
 14 the time, or as measured within two hours of the time, of driving or being in actual
 15 physical control of the vehicle, as shown by chemical analysis of ~~that the~~ person's
 16 breath, blood, or other bodily substance;
 17 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
 18 substance not obtained pursuant to a valid prescription, or any combination of an
 19 alcoholic beverage, marijuana, or ~~such~~ controlled drug or substance;
 20 (3) Under the influence of any controlled drug or substance obtained pursuant to a
 21 valid prescription, or any other substance, to a degree ~~which~~ that renders the
 22 person incapable of safely driving;
 23 (4) Under the combined influence of an alcoholic beverage and ~~or~~ any controlled drug
 24 or substance obtained pursuant to a valid prescription, or any other substance, to
 25 a degree which renders the person incapable of safely driving; or

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

3 **Section 3. That § 32-23-7 be AMENDED:**

4 **32-23-7.** In any criminal prosecution for a violation of § 32-23-1 relating to driving
 5 a vehicle while under the influence of an alcoholic beverage, a violation of § 22-16-41, or
 6 a violation of § 22-18-36, the amount of alcohol in the defendant's blood at the time
 7 alleged, as shown by chemical analysis of the defendant's blood, breath, or other bodily
 8 substance, gives rise to the following presumptions:

9 (1) If there was, at that time, five hundredths percent or less by weight of alcohol in
 10 the defendant's blood, it is presumed that the defendant was not under the
 11 influence of an alcoholic beverage;

12 (2) If there was, at that time, in excess of five hundredths percent but less than eight
 13 hundredths percent by weight of alcohol in the defendant's blood, ~~such fact does~~
 14 ~~not give rise to any~~ there is no presumption that the defendant was or was not
 15 under the influence of an alcoholic beverage, but ~~such~~ the fact may be considered
 16 with other competent evidence in determining the guilt or innocence of the
 17 defendant; or

18 (3) If there was, at that time, or as measured within two hours of that time, eight
 19 hundredths percent or more by weight of alcohol in the defendant's blood, it is
 20 presumed that the defendant was under the influence of an alcoholic beverage.

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

24 **Section 4. That § 32-23-21 be AMENDED:**

25 **32-23-21.** It is a Class 2 misdemeanor for any person under the age of twenty-
 26 one to drive, operate, or be in actual physical control of any vehicle:

27 (1) If there is physical evidence of 0.02 percent or more by weight of alcohol in the
 28 person's blood at the time, or as measured within two hours of the time, of the
 29 driving, operating, or being in actual physical control of the vehicle, as shown by a
 30 chemical analysis of the person's breath, blood, or other bodily substance; or

31 (2) After having consumed marijuana or any controlled drug or substance, other than
 32 a controlled drug or substance lawfully prescribed for the person, for as long as
 33 physical evidence of the consumption remains present in the person's body.

1 If a person is found guilty of or adjudicated for a violation of this section, the Unified
 2 Judicial System ~~shall~~ must notify the Department of Public Safety. Upon conviction or
 3 adjudication, the court ~~shall~~ must suspend that person's driver's license or operating
 4 privilege for a period of thirty days for a first offense, one hundred eighty days for a second
 5 offense, and one year for any third or subsequent offense. The court may, upon proof of
 6 financial responsibility under § 32-35-43.1, issue an order permitting the person to
 7 operate a vehicle for purposes of the person's employment, attendance at school, or
 8 attendance at any counseling program.

9 **Section 5. That § 42-8-45 be AMENDED:**

10 **42-8-45.** No person may operate a boat, as defined in subdivisions subdivision
 11 42-8-2(2B), (3), (5A), or (6) ~~while underway,~~ on the public waters of the state, while:
 12 (1) There is 0.08 percent or more by weight of alcohol in ~~that the~~ the person's blood at
 13 the time, or as measured within two hours of the time, of operating the boat, as
 14 shown by chemical analysis of ~~that the~~ the person's breath, blood, or other bodily
 15 substance;
 16 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
 17 substance not obtained pursuant to a valid prescription, or any combination of an
 18 alcoholic beverage, marijuana, or ~~such~~ controlled drug or substance;
 19 (3) Under the influence of any controlled drug or substance obtained pursuant to a
 20 valid prescription, or any other substance, to a degree which renders the person
 21 incapable of safely driving or operating such boat;
 22 (4) Under the combined influence of an alcoholic beverage and any controlled drug or
 23 substance obtained pursuant to a valid prescription, or any other substance, to a
 24 degree which renders the person incapable of safely driving or operating such boat;
 25 or
 26 (5) Under the influence of any substance ingested, inhaled, or otherwise taken into the
 27 body as prohibited by § 22-42-15.
 28 ~~Any~~ A violation of this section is a Class 1 misdemeanor.

29 **Section 6. That § 42-8-45.4 be AMENDED:**

30 **42-8-45.4.** In any criminal prosecution for a violation of § 42-8-45, the amount
 31 of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of
 32 the defendant's blood, breath, or other bodily substance, gives rise to the following
 33 presumptions:

- 1 (1) If there was, at that time, five hundredths percent or less by weight of alcohol in
 2 the defendant's blood, a presumption arises that the defendant was not under the
 3 influence of an alcoholic beverage;
- 4 (2) If there was, at that time, in excess of five hundredths percent but less than eight
 5 hundredths percent by weight of alcohol in the defendant's blood, ~~such fact does~~
 6 ~~not give rise to any~~ there is no presumption that the defendant was or was not
 7 under the influence of an alcoholic beverage, but ~~such~~ the fact may be considered
 8 with other competent evidence in determining the guilt or innocence of the
 9 defendant; and
- 10 (3) If there was, at that time, or as measured within two hours of that time, eight
 11 hundredths percent or more by weight of alcohol in the defendant's blood, a
 12 presumption arises that the defendant was under the influence of an alcoholic
 13 beverage.
 14 Percent by weight of alcohol in the blood is based upon milligrams of alcohol per
 15 1.0 cubic centimeter of whole blood, or 2100 cubic centimeters of deep lung breath.

16 **Section 7. That § 50-13-17 be AMENDED:**

- 17 **50-13-17.** ~~It is a Class 1 misdemeanor for any person who is under the influence~~
 18 ~~of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage~~
 19 ~~and any drug to operate an aircraft in the air or on the ground or water. No person may~~
 20 ~~operate an aircraft in the air or, on the ground, or on water who has while:~~
- 21 (1) There is 0.04 percent or more, by weight, of alcohol in that the person's blood at
 22 the time, or as measured within two hours of the time, of operating the aircraft, as
 23 shown by chemical analysis of the person's breath, blood, or other bodily
 24 substance; or
- 25 (2) Under the influence of an alcoholic beverage, marijuana, or any controlled drug or
 26 substance not obtained pursuant to a valid prescription, or any combination of an
 27 alcoholic beverage, marijuana, or controlled drug or substance.
- 28 A violation of this section is a Class 1 misdemeanor.