

2026 South Dakota Legislature

House Bill 1120**AMENDMENT 1120A
FOR THE INTRODUCED BILL**

1 **An Act to revise certain provisions related to operating a vehicle, ~~boat, or aircraft or~~**
2 **boat 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~~ 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) 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~~ there is no presumption that the defendant was or was not under the influence of an alcoholic beverage, but ~~such~~ the 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, or as measured within two hours of 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 7. That § 50-13-17 be AMENDED:~~

~~50-13-17. It is a Class 1 misdemeanor for any person who is under the influence of an alcoholic beverage or any drug, or the combined influence of an alcoholic beverage and any drug to operate an aircraft in the air or on the ground or water. No person may operate an aircraft in the air or, on the ground, or on water who has while:~~

~~(1) There is 0.04 percent or more, by weight, of alcohol in that the person's blood at the time, or as measured within two hours of the time, of operating the aircraft, as shown by chemical analysis of the person's breath, blood, or other bodily substance; or~~

~~(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 controlled drug or substance.~~

~~A violation of this section is a Class 1 misdemeanor.~~