

# State of South Dakota

SEVENTY-SEVENTH SESSION  
LEGISLATIVE ASSEMBLY, 2002

400H0213

## HOUSE ENGROSSED NO. **HB 1034** - 01/25/2002

Introduced by: The Committee on Transportation at the request of the Department of  
Transportation

1 FOR AN ACT ENTITLED, An Act to reduce the legal blood alcohol limits for motor vehicle  
2 drivers and boat operators.

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

4 Section 1. That § 32-23-1 be amended to read as follows:

5 32-23-1. ~~A~~ No person may ~~not~~ drive or be in actual physical control of any vehicle while:

- 6 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in ~~his~~ that person's blood as  
7 shown by chemical analysis of ~~his~~ that person's breath, blood, or other bodily  
8 substance;
- 9 (2) Under the influence of an alcoholic beverage;
- 10 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
11 which renders ~~him~~ the person incapable of safely driving; or
- 12 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
13 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
14 safely driving.

15 Section 2. That § 32-23-7 be amended to read as follows:



1        32-23-7. In any criminal prosecution for a violation of § 32-23-1 relating to driving a vehicle  
2 while under the influence of intoxicating liquor, a violation of § 22-16-41, or a violation of  
3 § 22-16-42, the amount of alcohol in the defendant's blood at the time alleged as shown by  
4 chemical analysis of the defendant's blood, breath, or other bodily substance ~~shall give~~ gives  
5 to the following presumptions:

6        (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
7 defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the  
8 influence of intoxicating liquor;

9        (2) If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
10 hundredths percent by weight of alcohol in the defendant's blood, such fact ~~shall~~ does  
11 not give rise to any presumption that the defendant was or was not under the  
12 influence of intoxicating liquor, but such fact may be considered with other competent  
13 evidence in determining the guilt or innocence of the defendant;

14        (3) If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
15 in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
16 influence of intoxicating liquor.

17        Percent by weight of alcohol in the blood shall be based upon milligrams of alcohol per 1.0  
18 cubic centimeters of whole blood or 2100 cubic centimeters of deep lung breath.

19        Section 3. That § 32-23-1.3 be amended to read as follows:

20        32-23-1.3. Any person arrested for driving or being in actual physical control of a vehicle  
21 while the weight of alcohol in the blood of the arrested person is ~~0.10~~ 0.08 percent or greater,  
22 shall be charged with a violation of § 32-23-1. The charge may be reduced or dismissed only if  
23 the prosecuting attorney states the reasons for reduction or dismissal in writing and on the record  
24 and files the reasons with the clerk of courts.

1 Section 4. That § 32-12A-44 be amended to read as follows:

2 32-12A-44. No person may drive or be in actual physical control of a commercial motor  
3 vehicle while there is between 0.04 and ~~0.10~~ 0.08 percent or more, by weight of alcohol in that  
4 person's blood as shown by chemical analysis of that person's breath, blood, or other body  
5 substance. Any violation of this section is a Class 2 misdemeanor.

6 Section 5. That § 42-8-45 be amended to read as follows:

7 42-8-45. No person may operate a boat while underway on the public waters of the state  
8 while:

- 9 (1) There is ~~0.10~~ 0.08 percent or more by weight of alcohol in his blood as shown by  
10 chemical analysis of ~~his~~ that person's breath, blood, or other bodily substance;
- 11 (2) Under the influence of an alcoholic beverage;
- 12 (3) Under the influence of marijuana or any controlled drug or substance to a degree  
13 which renders ~~him~~ the person incapable of safely driving or operating such boat; or
- 14 (4) Under the combined influence of an alcoholic beverage and marijuana or any  
15 controlled drug or substance to a degree which renders ~~him~~ the person incapable of  
16 safely driving or operating such boat.

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

18 Section 6. That § 42-8-45.4 be amended to read as follows:

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

- 22 (1) If there was at that time five hundredths percent or less by weight of alcohol in the  
23 defendant's blood, it ~~shall be~~ is presumed that the defendant was not under the  
24 influence of intoxicating liquor;

1       (2)    If there was at that time in excess of five hundredths percent but less than ~~ten~~ eight  
2            hundredths percent by weight of alcohol in the defendant's blood, such fact does not  
3            give rise to any presumption that the defendant was or was not under the influence of  
4            intoxicating liquor, but such fact may be considered with other competent evidence  
5            in determining the guilt or innocence of the defendant;

6       (3)    If there was at that time ~~ten~~ eight hundredths percent or more by weight of alcohol  
7            in the defendant's blood, it ~~shall be~~ is presumed that the defendant was under the  
8            influence of intoxicating liquor.

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