

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2141

2005 SENATE TRANSPORTATION

SB 2141

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2141

Senate Transportation Committee

Conference Committee

Hearing Date 1/20/05

Tape Number	Side A	Side B	Meter #
1	x		2295-3370
Committee Clerk Signature <i>Mary K. Mouson</i>			

Minutes:

Chairman Trenbeath opened the hearing on SB 2141 relating to boating under the influence; to provide a penalty; to provide an effective date; and to declare an emergency.

Robert Timian (ND Game and Fish Dept.) Testified on behalf of the ND Game and Fish Dept. in support of SB 2141. See attached testimony.

Senator Warner was unclear about the definition of "motorboat or vessel". Asked if it would include canoes, kayaks, and non motorized vehicles.

Robert Timian replied that yes it would include them.

Senator Warner also asked about the meaning of the word "manipulate".

Robert Timian answered that manipulate would usually mean using them or operating them.

Senator Trenbeath asked why don't we just insert alcohol if the problem we intend to solve on page 1 is that the courts don't know whether we are talking about alcohol or not.

Robert Timian said the way it is written here was provided by the Attorney General's office.

Senator Trenbeath asked why a person is presumed intoxicated at .10 in a boat and .08 in a car.

Robert Timian answered that .10 is the state standard set by the state legislature and the Federal Government hasn't strong armed the legislature into doing anything else. There is no intention to switch to a .08 unless the legislature decides to do it.

Senator Trenbeath asked whether a person would be operating or manipulating under the influence if he anchors his boat for the night, has a few drinks, and spends the night on the boat.

Robert Timian replied, no. The wording says "operating" a motor vessel. The way it is enforced is that the motor vessel must be under way.

Duaine Ash (ND Sportfishing Congress) See attached testimony in support of SB 2141.

Harold Neameyer (Cass County Wildlife Club) He spoke on behalf of the Cass County Wildlife Club, a group of about 200 members. They are in total agreement with the proposed bill. They feel they need to toughen up the laws because, with the increase in boat traffic and jet skis, etc., they are concerned with the safety of a lot of people.

Mike Donahue (ND Wildlife Federation and United Sportsmen of ND) Spoke on behalf of both organizations in a neutral position and said they would concur with the amendments proposed.

The hearing on SB 2141 was closed.

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2141

Senate Transportation Committee

Conference Committee

Hearing Date 2-03-05

Tape Number	Side A	Side B	Meter #
2	x		1645-1985
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Trenbeath opened SB 2141 for discussion. He reminded the committee that it dealt with operating a boat under the influence. They want to tie, at least, the proof mechanism to the regular DUI proof mechanism. They want to make the suspension of operating privileges one year rather than 90 days.

(Meter 1715) Discussion on making this conform to the highway standards. It's not necessary since the federal government doesn't require it.

Senator Warner motioned a **Do Pass**. Seconded by **Senator Bercier**.

As per Chairman Trenbeath, the vote was held open for Senator Espegard. Final roll call vote 6-0-0. **Passed**. Floor carrier is **Senator Warner**.

Date: 2-3-05
Roll Call Vote #: _____

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO 2141

Senate TRANSPORTATION Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Warner Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier	✓	
Senator Mutch	✓		Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 4, 2005 8:35 a.m.

Module No: SR-23-1813
Carrier: Warner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2141: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2141 was placed on the
Eleventh order on the calendar.

2005 HOUSE TRANSPORTATION

SB 2141

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2141

House Transportation Committee

Conference Committee

Hearing Date February 25, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.7-36.2
Committee Clerk Signature <i>DeLorena Albrecht</i>			

Minutes:

Acting Chairman Price opened the hearing on SB 2141 A Bill for an Act to amend and reenact subsection 2 of section 20.1-13-07, sections 20.1-13.1-06 and 20.1-13.1-07, subsection 5 of section 20.1-13.1-08, and section 20.1-13.1-09 of the North Dakota Century Code, relating to boating under the influence; to provide a penalty; to provide an effective date; and to declare an emergency.

Robert Timian, NDGF: (See attached testimony #1) This is basically a house cleaning bill to clarify some words.

Rep. Weiler(2.6) I have a question on page 1, line 14; b. that person is under the influence of intoxicating liquor. Isn't that a duplicate; the above subsection A that if a person has an alcohol concentration of at least ten one-hundredths of one percent by weight. That pretty much defines the alcohol level and then b says that person is under the influence of intoxicating liquor. I don't understand why you have it there twice?

Robert Timian:(3.3) The language here was prepared by the Attorney Generals office and I will not go into why? This was at their recommendation and not the Game & Fish Department.

Acting Chairman Price: (3.7) Just for your information the drivers one also says under the influence of intoxicating liquor.

Robert Timian: The concentration of ten one-hundreds if just the legal standard.

Rep. Schmidt(4.0) Could you define vessel? Would a vessel be a canoe?

Robert Timian: I believe a vessel is defined in another part of the century code which I don't have here. I don't believe we have ever arrested anyone for operating a canoe. (Karl looked up the definition on the computer and gave it to Rep. Schmidt). All our problems with alcohol and vessels are with motors on them.

Rep. Ruby(5.0) How do you keep track of someone that has been suspended for operating under the influence? If you caught them again and their name came up you identify them that way?

Robert Timian: When they are suspended we have, in our department, we keep track of all the suspensions and it is made available to all our workers. It is available to other law enforcement, but since it is not a part of your driving record, it does not go to DOT. It lists the boat registration so that is a tracking method. It is not as simple as a DUI where you can find them easier.

Rep. Ruby What do you do in a situation where maybe they don't even have their ID with them? Isn't this tough to enforce.

Robert Timian: In the situation you described, it is more difficult to enforce boating under suspension because we don't have all those tracking things like DOT. On the other hand the

number of boat under the influence occurrences is considerable less than driving. Most of them occur in one or two areas in the state.

Rep. Weiler(7.5) I want to go back to page 1, line 14. If a person is .06 would he be considered under the influence of intoxicating liquor?

Robert Timian: Under the influence is basically that you have drank enough that you are incapable of safely operating. It would be possible that you would be under the influence at a point less than .10. That is a legal standard, and some mandatory things happen at 1.10. But they would have to be proved that you are under the influence. Each person in this room reacts to alcohol at different ways and affects people each different. Boating with the affect of sun, wave and wind enhance the affect of alcohol. This is on a case by case basis and there has to be probable cause on all those steps.

Rep. Weiler(9.5) Page 2, line 25 & 29? Does that just have to do with the revolcating a privilege to operating a motor boat when they refuse to submit to testing? What is the reason you are increasing those?

Robert Timian: Yes, that is for refusal for testing. The reason for the increase if it use to be; the initial one was 90 days then it was 1 year and 2 years depending on. By moving the initial one to 1 year; then as you stepped up they increased the rest accordingly. A 90 day suspension doesn't mean anything if your suspension occurs in January, February or March. There is no boating so it is meaningless.

Rep. Ruby So now you are moving it to two years?

Robert Timian: The first time if you refused the test you could be suspended administratively for 90 days. Then, if a persons record shows that within five years preceding your most recent

refusal that person; then it use to be one year. We move that to two years; if three years etc. It is similar to the DUI.

Rep. Weiler(12.2)Is there a problem with people refusing to take a test when they have been out on a boat? Is that why there is an increase?

Robert Timian:We have had people refuse and have implemented this, but the point was by refusing and getting a 90 day suspension for most people, by the time the completion of the process the 90 day suspension is meaningless. If you move the first step up then you have to move all the rest up.

Rep. Delmore(13.2) However, if someone has this happen in May; then Rep. Price has it happen in September; wouldn't that be a different punishment for myself. If it started in May for me I am going to miss more of that time. Maybe we need to have a start up month? I think some people would get punished more severely than others by using this.

Robert Timian:(14.1) You are saying that if a persons suspension started May 1, and that would run across the summer and would end April 30th of the next year. There would be no difference as far as boating time the way I am looking at the calendar. In either case you would be suspended for the May, June or July in any case.

Rep. Delmore I think b. should be measured in the same way we do a DUI and you should meet that requirement.

Robert Timian: The DUI there are two different standards. The .10 is a legal standing; if you are this then the administrative sanctions apply. You don't have to do anything else you have to just say you are .10. Criminal side of it, if a person is not a .10 generally in both the DUI and in BUI's, most people, if it is a .10 and above or .08 for DUI the jury and court generally go along

with he is under the influence. If you can prove beyond a reasonable doubt that you are under the influence of alcohol to a point where you are a hazard to the safety of the public when operating a vehicle or boat. Different people react differently. You can have one person who is a .15 who if you look at them and because of allot of factors can act fairly normally and you can have another person can be below a .10 and you would think they are very drunk.

Rep. Delmore(19.5) I understand what you are saying, but we have two tiers in the DUI system. Here it appears to be those sanctions would apply regardless of whether you could prove in court. Am I misreading the bill on that?

Robert Timian: The administrative side, the first one is under revocation privileges upon refusal to submit to testing. That has nothing to do with the alcohol. You just refuse to submit so that is where that is. As far as the criminal side of this, you still have to go to court. You are either under the influence and found guilty of that or you aren't. It is not a two tier system in the way I view it. You have to convicted in a court of law of being under the influence.

Acting Chairman Price: (20.5) What type of testing equipment do you carry? What is the procedure the warden goes through. Do you carry the same as law enforcement does?

Robert Timian:(20.8) Our wardens are trained in detection of alcohol the same as the highway patrol goes through. Our officers also carry the same field test kit as they do. It is only used as a screening test, because the legislature did not give us authority for probable cause.

Acting Chairman Price: You talk about the chemical test. Then you transport them to a medical facility.

Robert Timian:21.8) The blood test would be given after being placed under arrest. It is not a refusal in the boat.

Rep. Thorpe(22.0) I am wondering on page 2, line 25 where it was one year you went to two years. Your first infraction is going to prevent you from operating the boat for two years. If that right?

Robert Timian:(22.8) Visiting with the Attorney Generals Office, if you go back to Page 4 starting on line 14. (Explained it was moved all up a year) This is the administrative portion just like a DUI, its a BUI. There is both a criminal and administrative side. The administrative hearing finds in favor of the state. Then they impose this sanction. Going back to why it is two and three and four years for revocation for the refusal. There is a revocation for refusing the test. The refusal is greater than straight administrative sanction. By refusing the test as it is now they get 6 months back so the point is if you are going to refuse that sanction for refusal is greater than not. That is under the DUI the same way.

Rep. Thorpe(25.4) If you approach this person that is boating. At what point is it called a refusal of test? If the person refuses the breathalyzer or refuses the blood test?

Robert Timian: There is no refusal until they are placed under arrest for DUI. Then the officer takes them into custody and they would take them to the facility where they would be tested. A person at that point can say I am not taking the test. Up until that point, what our officers do in the field (boat) are screening tests to establish probable cause to arrest. They are not the official test.

Rep. Thorpe I am trying to analysis the different steps. Then when you take them in for a blood test.

Robert Timian: Would it be helpful to take you through the arrest again? First of all you have to stop someone at all. There has to be some reason; you can't just stop them. Then we stop a

person and the officer believes this person is under the influence. He will do the screening test to determine probable cause. Whether or not this person is operating under the influence. If he determines he has probable cause, at that time he informs the person of that and puts the person under arrest. Then they are taken to a facility and the officer directs the test. At that point in time the person can refuse to take the test. At that point, then the administrative sanctions take affect. What happens if he takes the test and he is a .06? There would be no administrative sanctions for being a .10 because he isn't a .10. He could still be under the influence and operating not safely. That is the technical side. The practical side is we have never arrest anyone who was a .06. Frankly when they are operating in a boat, if you can smell alcohol on somebody they are probably about a .15 or greater.

Robert Timian:(29.8) I said smell alcohol, not on clothes. I should have brought the DUI static's for the past several years. Most of them occur right out here on the river by Bismarck. This is the highest concentration of boat activity in the state. The purpose is to not have people operating the boat and causing a safety hazard. That is the point of all of this.

Rep. Meyer If you are out and you refuse this test, that will be under a two year suspension and you take this to a court of law and are found not guilty, are you still suspended from driving a boat for two years?

Robert Timian: First, the refusal of the test, that sanction is imposed for refusing the test and has nothing to do with whether you are under the influence.

Rep. Vigesaa(31.6) I did not see anything about any kind of a fine for criminal charge? Is that addressed in another area.

Robert Timian: Yes, the criminal end of it is a Class B misdemeanor and that is in the code.

Rep. Vigessaa (32.2) This just doesn't apply to boating, if I read it right it applies to a skier too.

One line 8 it says manipulate water skis.

Robert Timian: Exactly the same question was asked over in the Senate side. Those are the words of the law as it has been operating since it was set up. From an enforcement standpoint it is the person operating the boat. Never have we arrested somebody for being on skis while they are intoxicated.

Duaine Ash: (See attached testimony #2)

Wade Williams, ND Assoc. of Counties:(34.7) This would be setting up two different standards; one for driving under the influence and one for boating under the influence. The state is concerned that someone could be tested and found to be .08 in the boat and later on get in a vehicle and drive and that is legally drunk. That is a concern there with this bill.

Rep. Meyer I don't understand what you mean?

Wade Williams: Their concern is the difference of .10 and .08 being different and they could be drunk in a vehicle and not in a boat.

Acting Chairman Ruby: Is there any further opposition.

Closed hearing(36..2)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2141

House Transportation Committee

Conference Committee

Hearing Date March 10, 2005

Tape Number	Side A	Side B	Meter #
2	X		16.5-48.9
Committee Clerk Signature <i>De Lou Albrecht</i>			

Minutes:

Chairman Weisz reopened the hearing on SB 2141. I had some concerns on being in actual physical control or operating a boat. OK you got a house boat out there and you drop anchor and every body wants to party. They are not moving and they are not going to, now under our normal DUI laws they could be charged with being in actual physical control because they have the ability to move that craft at any time. Under ND Century Code operate means to be under actual physical control, so they are one of the same. Maybe my concerns aren't justified?

Rep. Price The operate is already in there and we have a separate charge for actual physical control in the DUI laws. It is not under BUI laws.

Chairman Weisz They are under different definition for operate under the boating section. Operate means to navigate or otherwise move a motor boat or a vessel. We are toughening up the laws substantially and maybe I am just being over cautious.

Rep. Meyer (18.9) When he testified he said a boat is so different from a car so why doesn't this start automatically? He was saying he was trying to make it concur with the boating season and with this when you are changing this from one year to two years, I didn't understand why it wouldn't automatically start because there is no license to turn in or anything. Why would there be a waiting period at all.

Chairman Weisz There isn't, the issue was that they would get a BUI the last day of boating season, if he got a 90 day suspension who cares so it has no penalty at that time that is what I understand.

Rep. Delmore They moved it up from one year to two years and I still don't understand why we need to double the penalty for the first offense?

Rep. Price The part on page two is only to refuse to submit to the test. Because they are upping the 91 days to a year the penalty for refusal would have to be longer than being charged with a crime or there is no use having it, or everybody would refuse.

Rep. Delmore You talked about bringing Bob Bennett down. The other thing that some of us had questions about were the A & B on page 1. What is under the influence of an intoxicating liquor. Does that mean if I have had a beer. If we got a I don't know why we need b.

Chairman Weisz(21.4) You can be convicted of under the influence at .03 because it affect you and influenced, but that is a hard one to get and they don't get too many.

Rep. Price That is only used in a case by case basis but there has to be probable cause. That mirrors driving under the influence with the boaters law. The other thing under a that we talked about was they said .08 and was the same as driving under the influence.

Rep. Delmore(22.3) If I get a BUI goes it go on your record like a DUI? It doesn't because I don't have a boating license.

Rep. Weiler Under the influence, is that decision left up to the officer? Like you say you can take a blood test, blow into a whatever, and it can go to .03, but you might actually be a .1?

Chairman Weisz (23.1) There would be erratic driving and maybe they failed the sobriety test or coordination issues so there has to be proof.

Rep. Weiler(23.4) My questions was it will be left up to the officer? Page 1 Section A by weight at the time of the performance of the test within two hours after operating a motor vehicle. What does that mean?

Rep. Weiler What if I get off my boat and am hammered and 2 ½ hrs after does this not apply?

Chairman Weisz Lets say you were hammered on your boat and they chase you and you get away and it takes them 3 hours to find you and catch you then there is an issue of time? If you manage to out run them for that period of time.

Rep. Meyer The way this law is written you could be setting in your trailer by the lake shore and be arrested for a BUI?

Chairman Weisz No because you wouldn't be under actual physical control. I would argue maybe if you were anchored in the water on that boat and you were drinking you might be guilty.

Rep. Price What is the difference if someone is setting in a \$150,000 motor home and drinking and they have excess to driving that vehicle. (Much discussion on drinking and driving.)

Chairman Weisz If we did change the language to say navigate. Is there anything else that anyone has as an issue with this bill. Discussed the amendment.

Rep. Weiler (30.4) I still don't understand why b. has to be in there?

Chairman Weisz I don't think it does. Discussed more changes.

Rep. Weiler Discussed problem he has with the bill because of the 90 day period they discussed.

They wanted that penalty to last one year.

Rep. Price The boating season is May 1- November 1 so would the committee be agreeable if we put the refutable back the way it is, but for the sanction for section 3 that we do the 90 days.

Rep. Bernstein(33.9) I was making it just 3 months. It is generally not the fisherman that have a lot to drink; it is usually the recreational people. They are usually done within those two of three months.

Rep. Weiler We are making an assumption then and I am not sure we should pick on one particular group of boaters and leave the others out.

Discussion to get the amendment together correctly.

Rep. Price made a motion to accept the proposed amendment. Seconded by Rep. Delmore

Voice vote carried No opposition(43.2)

Rep. Price(45.8) After the amendment is completed the intern will e-mail it to all the committee members to be sure they are all comfortable with it.

Chairman Weisz(46.1) Any further discussion.

Motion Made by Rep. Hawken Seconded by Rep. Price

Do Pass As Amended 8 No 4 Yes 3 Absent Carrier: Rep. Price

done (48.8)

Date: 3-10-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 582141

House Transportation Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass No Amended

Motion Made By Rep Hawken Seconded By Rep. Price

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.	✓		Rep. Meyer		✓
Rep. Bernstein		✓	Rep. Schmidt	✓	
Rep. Dosch		✓	Rep. Thorpe	abs	
Rep. Iverson	✓				
Rep. Kelsch	abs				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	abs				
Rep. Vigasaa	✓				
Rep. Weiler		✓			

Total (Yes) 8 No 4

Absent 3

Floor Assignment Rep Price

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE
SB 2141: Transportation Committee (Rep. Welsz, Chairman) recommends
AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS**
(8 YEAS, 4 NAYS, 3 ABSENT AND NOT VOTING). SB 2141 was placed on the Sixth
order on the calendar.

Page 1, line 1, replace "sections" with "section"

Page 1, line 2, remove "20.1-13.1-06 and"

Page 2, remove lines 3 through 30

Page 3, remove lines 1 through 30

Page 4, remove lines 1 through 11

Page 4, line 15, after the boldfaced period insert:

"1."

Page 4, line 24, overstrike "1." and insert immediately thereafter "a.", remove the overstrike
over "~~ninety one days~~", and remove "one year"

Page 4, line 28, overstrike "2." and insert immediately thereafter "b.", remove the overstrike
over "~~three hundred sixty four days~~", and remove "two years"

Page 5, line 1, overstrike "3." and insert immediately thereafter "c.", remove the overstrike over
"~~two~~", and remove "three"

Page 5, after line 5, insert:

"2. A person who is prohibited from operating a motorboat or a vessel under
subdivision a of subsection 1 shall serve the prohibition within the time
period between May first and October first. If the person is unable to serve
the full prohibition within this time period in a single year, the person shall
serve the remaining portion of the prohibition during the same time period
in subsequent years."

Renumber accordingly

2005 TESTIMONY

SB 2141

Robert Timian

NORTH DAKOTA GAME AND FISH DEPARTMENT TESTIMONY
SB2141
SENATE TRANSPORTATION COMMITTEE
JANUARY 20, 2005

Same given to House

This bill was submitted at the request of the Game and Fish Department. This is a request to address three points.

The first is to clarify legislative intent as to whether "under the influence of" includes alcohol. There has been legal action under the existing law using the argument that legislature by not specifically including alcohol in the definition of "under the influence of" intended under the influence not to include alcohol.

The second addressed is when a hearing is requested, the length of the legal process for final imposition of the administrative suspension generally renders the resulting ninety day suspension meaningless. Example: An arrest for BUI is made on July 1st. After the legal process in which suspension is upheld, the ninety day suspension would start sometime after mid-August and normally later. The result is that most, if not all of the ninety day suspension is during the non boating season. If the suspension is to have meaning it must occur during the time in which boating normally takes place.

The third point is to change the requirement to providing the decision of the administrative hearing from "shall immediately deliver" to "within ten days of the conclusion of the hearing". It is not always possible to immediately locate the person and deliver the decision. This would give a reasonable amount of time to comply.

Please consider a **DO PASS** recommendation for SB 2141

1-20-05

Testimony for the North Dakota Sportfishing Congress
SB 2141

Mr. Chairman and members of the committee, my name is Duaine Ash and I am speaking today on behalf of the North Dakota Sportfishing Congress, an organization of fishing clubs from around the state. Our organization represents all the fishing clubs in the state and we also have an additional 480 individual members.

We concur with NDG&F and encourage you to support SB 2141.

Thank you for your time.

#2

**TESTIMONY OF DUAINE ASH, LOBBYIST #383,
NORTH DAKOTA SPORTFISHING CONGRESS
PRESENTED TO THE HOUSE OF REPRESENTATIVES TRANSPORTATION
COMMITTEE**

ON

SB 2141
February 25, 2005

Mr. Chairman and member of the committee:

We concur with the ND Game & Fish, we encourage you to support SB2141.

Thank you for your time.