

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL DRS45369-MH-56

Short Title: Improve Boating Safety.

(Public)

Sponsors: Senator Edwards (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE BOATING SAFETY IN NORTH CAROLINA BY AMENDING THE
3 BOATING WHILE INTOXICATED LAWS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 75A-10 is amended by adding a new subsection which reads:

6 "(b5) Use of Screening Test Results or Refusal by Officer. – The result or results of an
7 alcohol screening test, or an operator's refusal to submit to an alcohol screening test, may be used
8 by a law enforcement officer in determining, is admissible in a court to determine if there is
9 probable cause for believing, or may also be used by an administrative agency to determine if
10 there are reasonable grounds for believing:

- 11 (1) That the driver has committed a violation of this section, G.S. 75A-10.3, or
12 G.S. 75A-10.4; and
13 (2) That the driver had consumed alcohol and that the driver had in his or her body
14 previously consumed alcohol, but not to prove a particular alcohol
15 concentration.

16 Negative or low results on the alcohol screening test may be used in factually appropriate
17 cases by the officer, a court, or an administrative agency in determining whether a person's
18 alleged impairment is caused by an impairing substance other than alcohol. No alcohol screening
19 tests are valid under this section unless the device used is one approved by the Department of
20 Health and Human Services and the screening test is conducted in accordance with the applicable
21 regulations of the Department as to its manner and use."

22 **SECTION 2.** Chapter 75A of the General Statutes is amended by adding a new
23 section to read as follows:

24 **"§ 75A-10.4. Operating vessel, water skis, or personal watercraft by person less than 21**
25 **years old after consuming alcohol or drugs.**

26 (a) Offense. – It is unlawful for a person less than 21 years old to operate a vessel, water
27 skis, or personal watercraft while consuming alcohol or at any time while the person has
28 remaining in their body any alcohol or controlled substance previously consumed. A person less
29 than 21 years old does not violate this subsection if the controlled substance in the operator's
30 body was lawfully obtained and taken in therapeutically appropriate amounts.

31 (b) Odor Insufficient. – The odor of an alcoholic beverage on the breath of the operator
32 is insufficient evidence by itself to prove beyond a reasonable doubt that alcohol was remaining
33 in the operator's body in violation of this section unless the operator was offered an alcohol
34 screening test or chemical analysis and refused to provide all required samples of breath or blood
35 for analysis.



1 (c) Alcohol Screening Test. – Notwithstanding any other provision of law, an alcohol
2 screening test may be administered to an operator suspected of violation of subsection (a) of this
3 section, and the results of an alcohol screening test or the operator's refusal to submit may be
4 used by a law enforcement officer, a court, or an administrative agency in determining if alcohol
5 was present in the operator's body. No alcohol screening tests are valid under this section unless
6 the device used is one approved by the Department of Health and Human Services and the
7 screening test is conducted in accordance with the applicable regulations of the Department as to
8 its manner and use.

9 (d) Punishment; Effect When Impaired Driving Offense Also Charged. – The offense in
10 this section is a Class 2 misdemeanor. It is not, in any circumstances, a lesser included offense
11 of impaired boating under G.S. 75A-10. If a person is convicted under this section, and of an
12 offense involving impaired driving arising out of the same transaction, the aggregate punishment
13 imposed by the court may not exceed the maximum applicable to the offense involving impaired
14 boating, and any minimum punishment applicable shall be imposed."

15 **SECTION 3.** Section 1 of this act is effective when it becomes law and applies to
16 any hearing or trial occurring on or after that date. Section 2 of this act becomes effective October
17 1, 2021.