

CHAPTER 20.1-13.1 INTOXICATION TESTING OF BOAT OPERATORS

20.1-13.1-01. Implied consent to determine alcoholic and drug content of blood.

Any person who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcoholic, other drug, or combination thereof, content of the blood. As used in this chapter, "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the person, except persons mentioned in section 20.1-13.1-04, under arrest and informing that person that the person is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the person charged that refusal of the person to submit to the chemical test determined appropriate will result in that person being prohibited from operating a motorboat or vessel for up to three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

20.1-13.1-02. Chemical test of operator in serious bodily injury or fatal accident.

Notwithstanding section 20.1-13.1-01 or 20.1-13.1-06, when the operator of a motorboat or vessel is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of section 20.1-13-07, the operator may be compelled by a game warden or a police officer to submit to a chemical test.

20.1-13.1-03. Persons qualified to administer chemical test and opportunity for additional test. Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have an individual of that person's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the person charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

20.1-13.1-04. Consent of person incapable of refusal not withdrawn. Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 20.1-13.1-01 and the chemical test may be given.

20.1-13.1-05. Action following chemical test result for a motorboat or vessel operator. If a person submits to a chemical test under section 20.1-13.1-01, 20.1-13.1-03, or 20.1-13.1-04 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a motorboat or vessel, the following procedures apply:

1. The game warden or law enforcement officer shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the director's official notification to the person of the director's intent to prohibit the person from operating a motorboat or vessel in this state.
2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by saliva or urine sample or by drawing blood as provided in section 20.1-13.1-03 and the person tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the person resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the person from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the person from operating a motorboat or vessel serves as the director's official notification to the person of the director's intent to prohibit the person from operating a motorboat or vessel in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent, shall forward to the director a certified written report in the form required by the director. If the statement was given because of the results of a chemical test, the report must show that the game warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the person was lawfully arrested, that the person was chemically tested under this chapter, and that the results of the test show that the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the game warden or officer.

20.1-13.1-06. Revocation of privilege to operate motorboat or vessel upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 20.1-13.1-01, no chemical test may be given, but the game warden or law enforcement officer shall immediately issue to that person a statement of intent to prohibit the person from operating a motorboat or vessel. The statement serves as the director's official notification to the person of the director's intent to prohibit the person from operating a motorboat or vessel in this state and of the hearing procedures under this chapter. The director, upon the receipt of the certified written report of the game warden or law

enforcement officer in the form required by the director, forwarded by the warden or officer within five days after issuing the statement of intent, showing that the warden or officer had probable cause to believe the person had been operating a motorboat or vessel while in violation of section 20.1-13-07 or had observed that the motorboat or vessel was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 20.1-13.1-01, shall prohibit the person from operating a motorboat or vessel in this state for the appropriate period under this section. The period for which a person is prohibited from operating a motorboat or vessel under this section is:

- a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a motorboat or vessel for a violation of this chapter or for a violation of section 20.1-13-07.
 - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a motorboat or vessel for a violation of this chapter or for a violation of section 20.1-13-07.
 - c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a motorboat or vessel under this chapter or for a violation of section 20.1-13-07, and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a motorboat or vessel under this section if:
- a. No administrative hearing request is made under section 20.1-13.1-08;
 - b. The person mails an affidavit to the director within ten days after the game warden or law enforcement officer issues the statement of intent. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;
 - (2) Agrees that the person may not operate a motorboat or vessel for the appropriate period;
 - (3) Acknowledges the right to a section 20.1-13.1-08 administrative hearing and section 20.1-13.1-09 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person may not operate a motorboat or vessel for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the game warden or law enforcement officer issues the statement of intent, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 20.1-13-07 within twenty-five days after the game warden or law enforcement officer issues the statement of intent;

- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the game warden or law enforcement officer issues the statement of intent; and
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the end of the prohibition from operating a motorboat or vessel.
3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to violating section 20.1-13-07 to the director within ten days after it is ordered. Upon receipt of the order, the director immediately shall prohibit the person from operating a motorboat or vessel as provided under this section without providing an administrative hearing.

20.1-13.1-07. Administrative sanction for operating motorboat or vessel while having certain drug concentrations.

1. After the receipt of the certified report of a game warden or a law enforcement officer and if no written request for hearing has been received from the arrested person under section 20.1-13.1-08, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the game warden or law enforcement officer had probable cause to arrest the person and chemical test results show that the arrested person was operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a test within two hours after operating a motorboat or vessel, the director shall prohibit the person from operating any motorboat or vessel in this state as follows:
 - a. For ninety-one days if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-13-07 or the person has not been prohibited from operating a motorboat or vessel under this chapter.
 - b. For three hundred sixty-four days if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 20.1-13-07 or the person has once been prohibited from operating a motorboat or vessel under this chapter.
 - c. For two years if the person's record shows that within the five years preceding the date of the arrest, the person has twice been prohibited from operating a motorboat or vessel under this chapter, or for a violation of section 20.1-13-07, or any combination thereof, and the prohibitions resulted from at least two separate arrests.
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.

20.1-13.1-08. Administrative hearing on request.

1. Before prohibiting a person from operating a motorboat or vessel under section 20.1-13.1-06 or 20.1-13.1-07, the director shall afford that person an opportunity for a hearing if the person mails a request for the hearing to the director within ten days after the date the game warden or law enforcement officer issued a statement of intent to prohibit the person from operating a motorboat or vessel. The hearing must be held within twenty-five days after the date of issuance of the statement of intent,

but the hearing officer may extend the hearing to within thirty-five days after the issuance of the statement of intent if good cause is shown.

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting warden or officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the person was informed that that person may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
3. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for refusing to submit to a chemical test under section 20.1-13.1-01, the hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a chemical test under section 20.1-13.1-01 may cover only the issues of whether a game warden or law enforcement officer had probable cause to believe the person had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the person was placed under arrest; and whether that person refused to submit to the chemical test.
4. At a hearing under this section, the regularly kept records of the director may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions by issuing to the person a copy of the decision within ten days of the conclusion of the hearing. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing

officer's determination on prohibition of the person from operating a motorboat or vessel will be based on the written request for hearing, game warden's or law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the person, by regular mail, at the address on file with the director, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person that the person is prohibited from operating a motorboat or vessel in this state for the appropriate period. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 20.1-13.1-09.

20.1-13.1-09. Judicial review. Any person who has been prohibited from operating a motorboat or vessel by the decision of the hearing officer under section 20.1-13.1-08 may appeal within seven days after the date the hearing officer issued the decision under section 20.1-13.1-08 as shown by the date of the hearing officer's decision, notwithstanding section 28-32-42, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a chemical test was made or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer who rendered the decision. Neither the director nor the court may stay the decision pending decision on appeal. Within fifteen days after receipt of the notice of appeal, the director or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. This record is the record on which the appeal must be determined. No additional evidence may be heard. The court shall affirm the decision of the director or hearing officer unless it finds the evidence insufficient to warrant the conclusion reached by the director or hearing officer. The court may direct that the matter be returned to the director or hearing officer for rehearing and the presentation of additional evidence.

20.1-13.1-10. Interpretation of chemical tests. Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a motorboat or vessel is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.
2. Alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine.
3. The results of the chemical test must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.

4. The director of the state crime laboratory or the director's designee may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

5. Copies of the records referred to in subsections 3 and 4, certified by the recorder, or designated official, must be admitted as prima facie evidence of the matters stated in the records.
6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the person who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.
8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

20.1-13.1-11. Proof of refusal admissible in any action or proceeding. If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof.

20.1-13.1-12. Effect of evidence of chemical test. This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

20.1-13.1-13. Liability. Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting warden or officer is not liable in any civil action for damages arising out of the act except for gross negligence.

20.1-13.1-14. Operation of motorboat or vessel during period of prohibition - Penalty. Any person who operates a motorboat or vessel on the waters of this state during the period the person is prohibited from operating a motorboat or vessel under this chapter is guilty of a class A misdemeanor.