

Sixty-first
Legislative Assembly
of North Dakota

HOUSE BILL NO.

Introduced by

Representative Kilichowski

1 A BILL for an Act to amend and reenact sections 20.1-13-07, 20.1-13.1-05, 20.1-13.1-07,
2 20.1-13.1-08, 20.1-13.1-10, 20.1-13.1-12, 20.1-15-05, 20.1-15-07, 20.1-15-08, 20.1-15-11,
3 20.1-15-13, and 39-24.1-05 of the North Dakota Century Code, relating to blood alcohol content
4 for hunting, boating, up hand operation of snowmobiles.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 20.1-13-07 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **20.1-13-07. Prohibited operation - Penalty.**

- 9 1. No person may operate any motorboat or vessel, or manipulate any water skis,
10 surfboard, or similar device in a reckless or negligent manner so as to endanger
11 the life, limb, or property of any person. Reckless or negligent operation of a
12 motorboat or vessel includes weaving through congested motorboat or vessel
13 traffic, jumping the wake of another motorboat or vessel within one hundred feet
14 [30.48 meters] of the motorboat or vessel, or in any other manner that is not
15 reasonable or prudent.
- 16 2. A person may not operate a motorboat or vessel, or manipulate water skis, a
17 surfboard, or similar device if any of the following apply:
- 18 a. That person has an alcohol concentration of at least ~~ten~~ eight one-hundredths
19 of one percent by weight at the time of the performance of the test within two
20 hours after the operating of a motorboat or vessel.
- 21 b. That person is under the influence of intoxicating liquor.
- 22 c. That person is under the influence of any drug or substance or combination of
23 drugs or substances to a degree which renders that person incapable of
24 safely operating a motorboat or vessel.

d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely operating a motorboat or vessel.

The fact that a person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominantly caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

3. No person under twelve years of age may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older. Any person who violates this subsection is guilty of a class 2 noncriminal offense.

4. No person of twelve through fifteen years of age may operate a motorboat propelled by over a ten horsepower motor unless the operator is accompanied by a person eighteen years of age or older or the operator has taken and passed a boating course approved by the department. Any person who violates this subsection is guilty of a class 2 noncriminal offense.

5. No person may cause or knowingly permit a minor under sixteen years of age to operate a motorboat propelled by over a ten horsepower motor unless the minor is otherwise authorized to do so by this section.

6. No person may operate a motorboat or vessel within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized vessel, or within two hundred fifty feet [76.20 meters] of a reduced speed or slow or no wake sign at greater than slow or no wake speed.

7. No person may operate or permit the operation of a personal watercraft:

a. Without each person on board the personal watercraft wearing a United States coast guard approved type I, II, III, or V personal flotation device;

b. Within one hundred feet [30.48 meters] of a person fishing from a shoreline, swimmer, swimming diving raft, or an occupied, anchored or nonmotorized vessel at greater than slow or no wake speed;

- c. While towing a person on water skis, a kneeboard, an inflatable craft, or any other device unless an observer is on board;
- d. Without a lanyard-type engine cutoff switch being attached to the person, clothing, or personal flotation device of the operator, if the personal watercraft is equipped by the manufacturer with such a device;
- e. If any part of the spring-loaded throttle mechanism has been removed, altered, or tampered with so as to interfere with the return-to-idle system;
- f. To chase or harass wildlife;
- g. Through emergent or floating vegetation at other than slow or no wake speed;
- h. In a manner that unreasonably or unnecessarily endangers life, limb, or property, including weaving through congested watercraft traffic, jumping the wake of another watercraft within one hundred feet [30.48 meters] of the other watercraft; or
- i. In any other manner that is not reasonable and prudent.

SECTION 2. AMENDMENT. Section 20.1-13.1-05 of the North Dakota Century Code is amended and reenacted as follows:

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~~ eight 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~~ eight 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~~ eight 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.

SECTION 3. AMENDMENT. Section 20.1-13.1-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1 person under section 20.1-13.1-08, or if that hearing is requested and the findings,
2 conclusion, and decision from the hearing confirm that the game warden or law
3 enforcement officer had probable cause to arrest the person and chemical test
4 results show that the arrested person was operating a motorboat or vessel while
5 having an alcohol, other drug, or a combination thereof concentration of at least
6 ~~ten~~ eight one-hundredths of one percent by weight at the time of the performance
7 of a test within two hours after operating a motorboat or vessel, the director shall
8 prohibit the person from operating any motorboat or vessel in this state as follows:

- 9 a. For ninety-one days if the person's record shows that, within the five years
10 preceding the date of the arrest, the person has not previously violated
11 section 20.1-13-07 or the person has not been prohibited from operating a
12 motorboat or vessel under this chapter.
- 13 b. For three hundred sixty-four days if the person's record shows that, within the
14 five years preceding the date of the arrest, the person has once previously
15 violated section 20.1-13-07 or the person has once been prohibited from
16 operating a motorboat or vessel under this chapter.
- 17 c. For two years if the person's record shows that within the five years preceding
18 the date of the arrest, the person has twice been prohibited from operating a
19 motorboat or vessel under this chapter, or for a violation of section
20 20.1-13-07, or any combination thereof, and the prohibitions resulted from at
21 least two separate arrests.

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

28 **SECTION 4. AMENDMENT.** Section 20.1-13.1-08 of the North Dakota Century Code
29 is amended and reenacted as follows:

30 **20.1-13.1-08. Administrative hearing on request.**

- 1 1. Before prohibiting a person from operating a motorboat or vessel under section
2 20.1-13.1-06 or 20.1-13.1-07, the director shall afford that person an opportunity
3 for a hearing if the person mails a request for the hearing to the director within ten
4 days after the date the game warden or law enforcement officer issued a statement
5 of intent to prohibit the person from operating a motorboat or vessel. The hearing
6 must be held within twenty-five days after the date of issuance of the statement of
7 intent, but the hearing officer may extend the hearing to within thirty-five days after
8 the issuance of the statement of intent if good cause is shown.
- 9 2. If the issue to be determined by the hearing concerns the prohibition from
10 operating a motorboat or vessel for operating a motorboat or vessel while having
11 an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ eight
12 one-hundredths of one percent by weight, the hearing must be before a hearing
13 officer assigned by the director and at a time and place designated by the director.
14 The hearing must be recorded and its scope may cover only the issues of whether
15 the arresting warden or officer had probable cause to believe the person had been
16 operating a motorboat or vessel in violation of section 20.1-13-07; whether the
17 person was placed under arrest; whether the person was tested in accordance with
18 section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and
19 whether the chemical test results show the person had an alcohol, other drug, or a
20 combination thereof concentration of at least ~~ten~~ eight one-hundredths of one
21 percent by weight. For purposes of this section, a copy of a certified copy of an
22 analytical report of a blood, urine, or saliva sample from the director of the state
23 crime laboratory or the director's designee, or a certified copy of the checklist and
24 test records from a certified breath test operator establish prima facie the alcohol,
25 other drug, or a combination thereof concentration shown therein. Whether the
26 person was informed that that person may be prohibited from operating a
27 motorboat or vessel based on the results of the chemical test is not an issue.
- 28 3. If the issue to be determined by the hearing concerns the prohibition from
29 operating a motorboat or vessel for refusing to submit to a chemical test under
30 section 20.1-13.1-01, the hearing must be before a hearing officer assigned by the
31 director at a time and place designated by the director. The hearing must be

1 recorded. The scope of a hearing for refusing to submit to a chemical test under
2 section 20.1-13.1-01 may cover only the issues of whether a game warden or law
3 enforcement officer had probable cause to believe the person had been operating
4 a motorboat or vessel in violation of section 20.1-13-07; whether the person was
5 placed under arrest; and whether that person refused to submit to the chemical
6 test.

- 7 4. At a hearing under this section, the regularly kept records of the director may be
8 introduced. Those records establish prima facie their contents without further
9 foundation. For purposes of this chapter, the following are deemed regularly kept
10 records of the director: any copy of a certified copy of an analytical report of a
11 blood, urine, or saliva sample received by the director from the director of the state
12 crime laboratory or the director's designee or a game warden or a law enforcement
13 officer, a certified copy of the checklist and test records received by the director
14 from a certified breath test operator, and any copy of a certified copy of a certificate
15 of the director of the state crime laboratory or the director's designee relating to
16 approved methods, devices, operators, materials, and checklists used for testing
17 for alcohol, other drug, or a combination thereof concentration received by the
18 director from the director of the state crime laboratory or the director's designee, or
19 the recorder, unless the board of county commissioners has designated a different
20 official to maintain the certificate.

- 21 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
22 officer's findings of fact, conclusions of law, and decision based on the findings and
23 conclusions by issuing to the person a copy of the decision within ten days of the
24 conclusion of the hearing. If the hearing officer does not find in favor of the person,
25 the copy of the decision serves as the director's official notification to the person
26 that the person is prohibited from operating a motorboat or vessel in this state.
27 The hearing officer shall report the findings, conclusions, and decisions to the
28 director within ten days of the conclusion of the hearing.

- 29 6. If the person who requested a hearing under this section fails to appear at the
30 hearing without justification, the right to the hearing is waived, and the hearing
31 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.

SECTION 5. AMENDMENT. Section 20.1-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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~~ eight 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.

SECTION 6. AMENDMENT. Section 20.1-13.1-12 of the North Dakota Century Code is amended and reenacted as follows:

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~~ eight 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.

SECTION 7. AMENDMENT. Section 20.1-15-05 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-05. Action following chemical test result for a hunter. If a person submits to a chemical test under section 20.1-15-01, 20.1-15-03, or 20.1-15-04 and the test shows that person to have an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the performance of the test within two hours after being afield with a gun or other firearm or a bow and arrow, the following procedures apply:

- 1 1. The game warden or law enforcement officer shall immediately issue a statement
2 of intent to revoke, suspend, or deny hunting privileges and take possession of the
3 person's hunting license if it is then available. The issuance of a statement of
4 intent to revoke, suspend, or deny hunting privileges and the taking of possession
5 of the person's hunting license serves as the director's official notification to the
6 person of the director's intent to revoke, suspend, or deny hunting privileges in this
7 state.
- 8 2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by
9 saliva or urine sample or by drawing blood as provided in section 20.1-15-03 and
10 the person tested does not reside in an area in which the game warden or law
11 enforcement officer has jurisdiction, the game warden or law enforcement officer
12 shall, on receiving the analysis of the saliva, urine, or blood from the director of the
13 state crime laboratory or the director's designee and if the analysis shows that
14 person had an alcohol, other drug, or a combination thereof concentration of at
15 least ~~ten~~ eight one-hundredths of one percent by weight, either proceed in
16 accordance with subsection 1 during that person's reappearance within the game
17 warden's or officer's jurisdiction or notify a game warden or law enforcement
18 agency having jurisdiction where the person resides. On that notification, that
19 game warden or law enforcement agency shall immediately issue a statement of
20 intent to revoke, suspend, or deny hunting privileges and take possession of the
21 person's hunting license if it is then available and, within twenty-four hours, forward
22 the license to the game warden or law enforcement agency making the arrest or to
23 the director. The issuance of a statement of intent to revoke, suspend, or deny
24 hunting privileges and the taking of possession of the person's hunting license
25 serves as the director's official notification to the person of the director's intent to
26 revoke, suspend, or deny hunting privileges in this state.
- 27 3. The game warden or law enforcement officer, within five days of issuing the
28 statement of intent and taking possession of the hunting license, shall forward to
29 the director a certified written report in the form required by the director and the
30 person's hunting license taken under subsection 1 or 2. If the notice was given
31 and the license was taken because of the results of a chemical test, the report

1 must show that the game warden or officer had reasonable grounds to believe the
2 person had been afield with a gun or other firearm or a bow and arrow while in
3 violation of section 20.1-01-06, that the person was lawfully arrested, that the
4 person was chemically tested under this chapter, and that the results of the test
5 show that the person had an alcohol, other drug, or a combination thereof
6 concentration of at least ~~ten~~ eight one-hundredths of one percent by weight. In
7 addition to the report, the game warden or law enforcement officer shall forward to
8 the director a certified copy of the operational checklist and test records of a breath
9 test and a copy of the certified copy of the analytical report for a blood, saliva, or
10 urine test for all tests administered at the direction of the game warden or officer.

11 **SECTION 8. AMENDMENT.** Section 20.1-15-07 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **20.1-15-07. Administrative sanction for being afield with a gun or other firearm or**
14 **a bow and arrow while having certain drug concentrations.**

15 1. After the receipt of a person's hunting license, if taken under section 20.1-15-05,
16 and the certified report of a game warden or a law enforcement officer and if no
17 written request for hearing has been received from the arrested person under
18 section 20.1-15-08, or if that hearing is requested and the findings, conclusion, and
19 decision from the hearing confirm that the game warden or law enforcement officer
20 had reasonable grounds to arrest the person and chemical test results show that
21 the arrested person had been afield with a gun or other firearm or a bow and arrow
22 while having an alcohol, other drug, or a combination thereof concentration of at
23 least ~~ten~~ eight one-hundredths of one percent by weight at the time of the
24 performance of a test within two hours after being afield with a gun or other firearm
25 or a bow and arrow, the director shall suspend the person's hunting privileges as
26 follows:

27 a. For one year if the person's record shows that, within the five years preceding
28 the date of the arrest, the person has not previously violated section
29 20.1-01-06 or the person's hunting privileges have not previously been
30 suspended or revoked under this chapter.

- 1 b. For two years if the person's record shows that, within the five years
2 preceding the date of the arrest, the person has once previously violated
3 section 20.1-01-06 or the person's hunting privileges have once previously
4 been suspended or revoked under this chapter.
- 5 c. For three years if the person's record shows that within the five years
6 preceding the date of the arrest, the person's hunting privileges have at least
7 twice previously been suspended, revoked, or issuance denied under this
8 chapter, or for a violation of section 20.1-01-06, or any combination thereof,
9 and the suspensions, revocations, or denials resulted from at least two
10 separate arrests.

- 11 2. In the suspension of the person's hunting privileges the director shall give credit for
12 the time the person was without a hunting license after the day of the offense.

13 **SECTION 9. AMENDMENT.** Section 20.1-15-08 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **20.1-15-08. Administrative hearing on request.**

- 16 1. Before issuing an order of suspension, revocation, or denial under section
17 20.1-15-06 or 20.1-15-07, the director shall afford that person an opportunity for a
18 hearing if the person mails a request for the hearing to the director within ten days
19 after the date the game warden or law enforcement officer issued a statement of
20 intent to revoke, suspend, or deny hunting privileges and took possession of that
21 person's hunting license. The hearing must be held within twenty-five days after
22 the date the game warden or law enforcement officer issued a statement of intent
23 to revoke, suspend, or deny hunting privileges and took possession of that
24 person's hunting license, but the hearing officer may extend the hearing to within
25 thirty-five days after the date the game warden or law enforcement officer issued a
26 statement of intent to revoke, suspend, or deny hunting privileges and took
27 possession of that person's hunting license if good cause is shown.
- 28 2. If the issue to be determined by the hearing concerns suspension of hunting
29 privileges for being afield with a gun or other firearm or a bow and arrow while
30 having an alcohol, other drug, or a combination thereof concentration of at least
31 ~~ten~~ eight one-hundredths of one percent by weight, the hearing must be before a

1 hearing officer assigned by the director and at a time and place designated by the
2 director. The hearing must be recorded and its scope may cover only the issues of
3 whether the arresting warden or officer had reasonable grounds to believe the
4 person had been afield with a gun or other firearm or bow and arrow in violation of
5 section 20.1-01-06; whether the person was placed under arrest; whether the
6 person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if
7 applicable, section 20.1-15-03; and whether the chemical test results show the
8 person had an alcohol, other drug, or a combination thereof concentration of at
9 least ~~ten~~ eight one-hundredths of one percent by weight. For purposes of this
10 section, a copy of a certified copy of an analytical report of a blood, urine, or saliva
11 sample from the director of the state crime laboratory or the director's designee, or
12 a certified copy of the checklist and test records from a certified breath test
13 operator establish prima facie the alcohol, other drug, or a combination thereof
14 concentration shown therein. Whether the person was informed that the privilege
15 to hunt might be suspended based on the results of the chemical test is not an
16 issue.

- 17 3. If the issue to be determined by the hearing concerns revocation of hunting
18 privileges for refusing to submit to a chemical test under section 20.1-15-01 or
19 20.1-15-15, the hearing must be before a hearing officer assigned by the director at
20 a time and place designated by the director. The hearing must be recorded. The
21 scope of a hearing for refusing to submit to a chemical test under section
22 20.1-15-01 may cover only the issues of whether a game warden or law
23 enforcement officer had reasonable grounds to believe the person had been afield
24 with a gun or other firearm or a bow and arrow in violation of section 20.1-01-06;
25 whether the person was placed under arrest; and whether that person refused to
26 submit to the chemical test. The scope of a hearing for refusing to submit to a
27 chemical test under section 20.1-15-15 may cover only the issues of whether the
28 game warden or law enforcement officer had reason to believe and had, through
29 the officer's observations, formulated an opinion that the person's body contains
30 alcohol, other drugs, or a combination thereof and whether the person refused to
31 submit to the onsite screening test. Whether the person was informed that the

1 privilege to hunt would be revoked or denied for refusal to submit to the test is not
2 an issue.

3 4. At a hearing under this section, the regularly kept records of the director may be
4 introduced. Those records establish prima facie their contents without further
5 foundation. For purposes of this chapter, the following are deemed regularly kept
6 records of the director: any copy of a certified copy of an analytical report of a
7 blood, urine, or saliva sample received by the director from the director of the state
8 crime laboratory or the director's designee or a game warden or a law enforcement
9 officer, a certified copy of the checklist and test records received by the director
10 from a certified breath test operator, and any copy of a certified copy of a certificate
11 of the director of the state crime laboratory or the director's designee relating to
12 approved methods, devices, operators, materials, and checklists used for testing
13 for alcohol, other drug, or a combination thereof concentration received by the
14 director from the director of the state crime laboratory or the director's designee, or
15 the recorder, unless the board of county commissioners has designated a different
16 official to maintain the certificate.

17 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
18 officer's findings of fact, conclusions of law, and decision based on the findings and
19 conclusions and shall immediately deliver to the person a copy of the decision. If
20 the hearing officer does not find in favor of the person, the copy of the decision
21 serves as the director's official notification to the person of the revocation,
22 suspension, or denial of hunting privileges in this state. The hearing officer shall
23 report the findings, conclusions, and decisions to the director within ten days of the
24 conclusion of the hearing. If the hearing officer has determined in favor of the
25 person, the director shall return the person's hunting license.

26 6. If the person who requested a hearing under this section fails to appear at the
27 hearing without justification, the right to the hearing is waived, and the hearing
28 officer's determination on the revocation, suspension, or denial of hunting
29 privileges will be based on the written request for hearing, game warden's or law
30 enforcement officer's report, and other evidence as may be available. The hearing
31 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 of the revocation, suspension, or denial of hunting privileges in this state. 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 20.1-15-09.

SECTION 10. AMENDMENT. Section 20.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-11. 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 being afield with a gun or other firearm or a bow and arrow 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, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. A person having an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.

- 1 4. Alcohol concentration is based upon grams of alcohol per one hundred cubic
2 centimeters of blood or grams of alcohol per two hundred ten liters of end
3 expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine.
- 4 5. The results of the chemical test must be received in evidence when it is shown that
5 the sample was properly obtained and the test was fairly administered, and if the
6 test is shown to have been performed according to methods and with devices
7 approved by the director of the state crime laboratory or the director's designee,
8 and by an individual possessing a certificate of qualification to administer the test
9 issued by the director of the state crime laboratory or the director's designee. The
10 director of the state crime laboratory or the director's designee is authorized to
11 approve satisfactory devices and methods of chemical tests and determine the
12 qualifications of individuals to conduct such tests, and shall issue a certificate to
13 every qualified operator. An operator shall exhibit the certificate upon demand of
14 the person requested to take the chemical test.
- 15 6. The director of the state crime laboratory or the director's designee may appoint,
16 train, certify, and supervise field inspectors of breath testing equipment and its
17 operation, and the inspectors shall report the findings of any inspection to the
18 director of the state crime laboratory or the director's designee for appropriate
19 action. Upon approval of the methods or devices, or both, required to perform the
20 tests and the persons qualified to administer them, the director of the state crime
21 laboratory or the director's designee shall prepare and file written record of the
22 approval with the director and the recorder in each county, unless the board of
23 county commissioners designates a different official, and shall include in the
24 record:
 - 25 a. An annual register of the specific testing devices currently approved, including
26 serial number, location, and the date and results of last inspection.
 - 27 b. An annual register of currently qualified and certified operators of the devices,
28 stating the date of certification and its expiration.
 - 29 c. The operational checklist and forms prescribing the methods currently
30 approved by the director of the state crime laboratory or the director's
31 designee in using the devices during the administration of the tests.

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

5 7. Copies of the records referred to in subsections 5 and 6, certified by the recorder,
6 or designated official, must be admitted as prima facie evidence of the matters
7 stated in the records.

8 8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the
9 director of the state crime laboratory or the director's designee must be accepted
10 as prima facie evidence of the results of a chemical test performed under this
11 chapter.

12 9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal
13 proceeding may subpoena, without cost to the defendant, the person who
14 conducted the chemical test referred to in this section to testify at the trial on the
15 issue of the amount of alcohol, drugs, or a combination thereof in the defendant's
16 blood, breath, saliva, or urine at the time of the alleged act.

17 10. A signed statement from the individual medically qualified to draw the blood
18 sample for testing as set forth in subsection 5 is prima facie evidence that the
19 blood sample was properly drawn and no further foundation for the admission of
20 this evidence may be required.

21 **SECTION 11. AMENDMENT.** Section 20.1-15-13 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **20.1-15-13. Effect of evidence of chemical test.** This chapter does not limit the
24 introduction of any other competent evidence bearing on the question of whether the person
25 was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the
26 chemical test results show an alcohol, other drug, or a combination thereof concentration of at
27 least ~~ten~~ eight one-hundredths of one percent, the purpose of the evidence must be limited to
28 the issues of probable cause, whether an arrest was made prior to the administering of the test,
29 and the validity of the test results.

30 **SECTION 12. AMENDMENT.** Section 39-24.1-05 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **39-24.1-05. Action following chemical test result for a snowmobile operator.** If a
2 person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the
3 test shows that person to have the presence of a drug in that person's body or an alcohol
4 concentration of at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the
5 performance of the test within two hours after the operating of a snowmobile, the test is
6 evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.