

HOUSE BILL NO. 1408

Introduced by

Representative Kliniske

1 A BILL for an Act to create and enact a new section to chapter 20.1-15 of the North Dakota
2 Century Code, relating to consumption of alcohol while hunting; to amend and reenact section
3 20.1-15-05, subsection 1 of section 20.1-15-07, subsection 2 of section 20.1-15-08, sections
4 20.1-15-11, and 20.1-15-13 of the North Dakota Century Code, relating to alcohol or drug level
5 for purposes of determining hunting while intoxicated; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 20.1-15-05 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **20.1-15-05. Action following chemical test result for a hunter.** If a person submits
10 to a chemical test under section 20.1-15-01, 20.1-15-03, or 20.1-15-04 and the test shows that
11 person to have an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ five
12 one-hundredths of one percent by weight at the time of the performance of the test within two
13 hours after being afield with a gun or other firearm or a bow and arrow, the following procedures
14 apply:

- 15 1. The game warden or law enforcement officer shall immediately issue a statement
16 of intent to revoke, suspend, or deny hunting privileges and take possession of the
17 person's hunting license if it is then available. The issuance of a statement of
18 intent to revoke, suspend, or deny hunting privileges and the taking of possession
19 of the person's hunting license serves as the director's official notification to the
20 person of the director's intent to revoke, suspend, or deny hunting privileges in this
21 state.
- 22 2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by
23 saliva or urine sample or by drawing blood as provided in section 20.1-15-03 and
24 the person tested does not reside in an area in which the game warden or law

1 enforcement officer has jurisdiction, the game warden or law enforcement officer
2 shall, on receiving the analysis of the saliva, urine, or blood from the state
3 toxicologist and if the analysis shows that person had an alcohol, other drug, or a
4 combination thereof concentration of at least ~~ten~~ five one-hundredths of one
5 percent by weight, either proceed in accordance with subsection 1 during that
6 person's reappearance within the game warden's or officer's jurisdiction or notify a
7 game warden or law enforcement agency having jurisdiction where the person
8 resides. On that notification, that game warden or law enforcement agency shall
9 immediately issue a statement of intent to revoke, suspend, or deny hunting
10 privileges and take possession of the person's hunting license if it is then available
11 and, within twenty-four hours, forward the license to the game warden or law
12 enforcement agency making the arrest or to the director. The issuance of a
13 statement of intent to revoke, suspend, or deny hunting privileges and the taking of
14 possession of the person's hunting license serves as the director's official
15 notification to the person of the director's intent to revoke, suspend, or deny
16 hunting privileges in this state.

- 17 3. The game warden or law enforcement officer, within five days of issuing the
18 statement of intent and taking possession of the hunting license, shall forward to
19 the director a certified written report in the form required by the director and the
20 person's hunting license taken under subsection 1 or 2. If the notice was given
21 and the license was taken because of the results of a chemical test, the report
22 must show that the game warden or officer had reasonable grounds to believe the
23 person had been afield with a gun or other firearm or a bow and arrow while in
24 violation of section 20.1-01-06, that the person was lawfully arrested, that the
25 person was chemically tested under this chapter, and that the results of the test
26 show that the person had an alcohol, other drug, or a combination thereof
27 concentration of at least ~~ten~~ five one-hundredths of one percent by weight. In
28 addition to the report, the game warden or law enforcement officer shall forward to
29 the director a certified copy of the operational checklist and test records of a breath
30 test and a copy of the certified copy of the analytical report for a blood, saliva, or
31 urine test for all tests administered at the direction of the game warden or officer.

1 **SECTION 2. AMENDMENT.** Subsection 1 of section 20.1-15-07 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 1. After the receipt of a person's hunting license, if taken under section 20.1-15-05,
4 and the certified report of a game warden or a law enforcement officer and if no
5 written request for hearing has been received from the arrested person under
6 section 20.1-15-08, or if that hearing is requested and the findings, conclusion, and
7 decision from the hearing confirm that the game warden or law enforcement officer
8 had reasonable grounds to arrest the person and chemical test results show that
9 the arrested person had been afield with a gun or other firearm or a bow and arrow
10 while having an alcohol, other drug, or a combination thereof concentration of at
11 least ~~ten~~ five one-hundredths of one percent by weight at the time of the
12 performance of a test within two hours after being afield with a gun or other firearm
13 or a bow and arrow, the director shall suspend the person's hunting privileges as
14 follows:

- 15 a. For one year if the person's record shows that, within the five years preceding
16 the date of the arrest, the person has not previously violated section
17 20.1-01-06 or the person's hunting privileges have not previously been
18 suspended or revoked under this chapter.
- 19 b. For two years if the person's record shows that, within the five years
20 preceding the date of the arrest, the person has once previously violated
21 section 20.1-01-06 or the person's hunting privileges have once previously
22 been suspended or revoked under this chapter.
- 23 c. For three years if the person's record shows that within the five years
24 preceding the date of the arrest, the person's hunting privileges have at least
25 twice previously been suspended, revoked, or issuance denied under this
26 chapter, or for a violation of section 20.1-01-06, or any combination thereof,
27 and the suspensions, revocations, or denials resulted from at least two
28 separate arrests.

29 **SECTION 3. AMENDMENT.** Subsection 2 of section 20.1-15-08 of the 1995
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ five 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 reasonable grounds to believe the person had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the person was placed under arrest; whether the person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the person had an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ five 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 state toxicologist, 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 the privilege to hunt might be suspended based on the results of the chemical test is not an issue.

SECTION 4. AMENDMENT. Section 20.1-15-11 of the 1995 Supplement to 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~~ five 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.

4. 3. 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 alveolar air or grams of alcohol per sixty-seven cubic centimeters of urine.

5. 4. 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 state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist 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.

6. 5. The state toxicologist 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 state toxicologist 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 state toxicologist shall prepare and file written record of the approval with the director and the clerk of the district court in each county 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 state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

~~7.~~ 6. Copies of the records referred to in subsections 5 and 6, certified by the clerk of the district court, must be admitted as prima facie evidence of the matters stated in the records.

~~8.~~ 7. A certified copy of the analytical report of a blood, urine, or saliva test issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.

~~9.~~ 8. 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.

~~10.~~ 9. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 5 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 5. AMENDMENT. Section 20.1-15-13 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-13. 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

1 least ~~ten~~ five one-hundredths of one percent, the purpose of the evidence must be limited to the
2 issues of probable cause, whether an arrest was made prior to the administering of the test,
3 and the validity of the test results.

4 **SECTION 6.** A new section to chapter 20.1-15 of the North Dakota Century Code is
5 created and enacted as follows:

6 **Being afield with open bottle - Penalty.** A person may not drink or consume alcoholic
7 beverages, as defined in section 5-01-01, while that person is afield with a gun or other firearm
8 or a bow and arrow. A person who is afield with a gun or other firearm or a bow and arrow may
9 not have in that person's possession any bottle or receptacle containing alcoholic beverages
10 which has been opened, or the seal broken, or the contents of which have been partially
11 removed. Any person willfully violating this section is guilty of an infraction.