

HOUSE BILL NO. 1470

Introduced by

Representatives Kilichowski, Koppelman, Kretschmar, Metcalf

Senators Mathern, Nodland

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

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

8 **SECTION 1. AMENDMENT.** Subsection 2 of section 20.1-13-07 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 2. A person may not operate a motorboat or vessel, or manipulate water skis, a
11 surfboard, or similar device if any of the following apply:
- 12 a. That person has an alcohol concentration of at least ~~ten~~ eight one-hundredths
13 of one percent by weight at the time of the performance of the test within two
14 hours after the operating of a motorboat or vessel.
 - 15 b. That person is under the influence of intoxicating liquor.
 - 16 c. That person is under the influence of any drug or substance or combination of
17 drugs or substances to a degree which renders that person incapable of
18 safely operating a motorboat or vessel.
 - 19 d. That person is under the combined influence of alcohol and any other drugs
20 or substances to a degree which renders that person incapable of safely
21 operating a motorboat or vessel.

22 The fact that a person charged with violating this section is or has been legally
23 entitled to use alcohol or other drugs or substances is not a defense against any
24 charge for violating this section, unless a drug which predominantly caused

1 impairment was used only as directed or cautioned by a practitioner who legally
2 prescribed or dispensed the drug to that person.

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

5 **20.1-13.1-05. Action following chemical test result for a motorboat or vessel**

6 **operator.** If a person submits to a chemical test under section 20.1-13.1-01, 20.1-13.1-03, or
7 20.1-13.1-04 and the test shows that person to have an alcohol, other drug, or a combination
8 thereof concentration of at least ~~ten~~ eight one-hundredths of one percent by weight at the time
9 of the performance of the test within two hours after the operating of a motorboat or vessel, the
10 following procedures apply:

- 11 1. The game warden or law enforcement officer shall immediately issue a statement
12 of intent to prohibit the person from operating a motorboat or vessel. The issuance
13 of a statement of intent to prohibit the person from operating a motorboat or vessel
14 serves as the director's official notification to the person of the director's intent to
15 prohibit the person from operating a motorboat or vessel in this state.
- 16 2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by
17 saliva or urine sample or by drawing blood as provided in section 20.1-13.1-03 and
18 the person tested does not reside in an area in which the game warden or law
19 enforcement officer has jurisdiction, the game warden or law enforcement officer
20 shall, on receiving the analysis of the saliva, urine, or blood from the director of the
21 state crime laboratory or the director's designee and if the analysis shows that
22 person had an alcohol, other drug, or a combination thereof concentration of at
23 least ~~ten~~ eight one-hundredths of one percent by weight, either proceed in
24 accordance with subsection 1 during that person's reappearance within the game
25 warden's or officer's jurisdiction or notify a game warden or law enforcement
26 agency having jurisdiction where the person resides. On that notification, that
27 game warden or law enforcement agency shall immediately issue a statement of
28 intent to prohibit the person from operating a motorboat or vessel. The issuance of
29 a statement of intent to prohibit the person from operating a motorboat or vessel
30 serves as the director's official notification to the person of the director's intent to
31 prohibit the person from operating a motorboat or vessel in this state.

1 3. The game warden or law enforcement officer, within five days of issuing the
2 statement of intent, shall forward to the director a certified written report in the form
3 required by the director. If the statement was given because of the results of a
4 chemical test, the report must show that the game warden or officer had probable
5 cause to believe the person had been operating a motorboat or vessel while in
6 violation of section 20.1-13-07, that the person was lawfully arrested, that the
7 person was chemically tested under this chapter, and that the results of the test
8 show that the person had an alcohol, other drug, or a combination thereof
9 concentration of at least ~~ten~~ eight one-hundredths of one percent by weight. In
10 addition to the report, the game warden or law enforcement officer shall forward to
11 the director a certified copy of the operational checklist and test records of a breath
12 test and a copy of the certified copy of the analytical report for a blood, saliva, or
13 urine test for all tests administered at the direction of the game warden or officer.

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

16 **20.1-13.1-07. Administrative sanction for operating motorboat or vessel while**
17 **having certain drug concentrations.**

18 1. After the receipt of the certified report of a game warden or a law enforcement
19 officer and if no written request for hearing has been received from the arrested
20 person under section 20.1-13.1-08, or if that hearing is requested and the findings,
21 conclusion, and decision from the hearing confirm that the game warden or law
22 enforcement officer had probable cause to arrest the person and chemical test
23 results show that the arrested person was operating a motorboat or vessel while
24 having an alcohol, other drug, or a combination thereof concentration of at least
25 ~~ten~~ eight one-hundredths of one percent by weight at the time of the performance
26 of a test within two hours after operating a motorboat or vessel, the director shall
27 prohibit the person from operating any motorboat or vessel in this state as follows:
28 a. For ninety-one days if the person's record shows that, within the five years
29 preceding the date of the arrest, the person has not previously violated
30 section 20.1-13-07 or the person has not been prohibited from operating a
31 motorboat or vessel under this chapter.

- 1 b. For three hundred sixty-four days if the person's record shows that, within the
2 five years preceding the date of the arrest, the person has once previously
3 violated section 20.1-13-07 or the person has once been prohibited from
4 operating a motorboat or vessel under this chapter.
- 5 c. For two years if the person's record shows that within the five years preceding
6 the date of the arrest, the person has twice been prohibited from operating a
7 motorboat or vessel under this chapter, or for a violation of section
8 20.1-13-07, or any combination thereof, and the prohibitions resulted from at
9 least two separate arrests.
- 10 2. A person who is prohibited from operating a motorboat or a vessel under
11 subdivision a of subsection 1 shall serve the prohibition within the time period
12 between May first and October first. If the person is unable to serve the full
13 prohibition within this time period in a single year, the person shall serve the
14 remaining portion of the prohibition during the same time period in subsequent
15 years.

16 **SECTION 4. AMENDMENT.** Subsection 2 of section 20.1-13.1-08 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 2. If the issue to be determined by the hearing concerns the prohibition from
19 operating a motorboat or vessel for operating a motorboat or vessel while having
20 an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~ eight
21 one-hundredths of one percent by weight, the hearing must be before a hearing
22 officer assigned by the director and at a time and place designated by the director.
23 The hearing must be recorded and its scope may cover only the issues of whether
24 the arresting warden or officer had probable cause to believe the person had been
25 operating a motorboat or vessel in violation of section 20.1-13-07; whether the
26 person was placed under arrest; whether the person was tested in accordance with
27 section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and
28 whether the chemical test results show the person had an alcohol, other drug, or a
29 combination thereof concentration of at least ~~ten~~ eight one-hundredths of one
30 percent by weight. For purposes of this section, a copy of a certified copy of an
31 analytical report of a blood, urine, or saliva sample from the director of the state

1 crime laboratory or the director's designee, or a certified copy of the checklist and
2 test records from a certified breath test operator establish prima facie the alcohol,
3 other drug, or a combination thereof concentration shown therein. Whether the
4 person was informed that that person may be prohibited from operating a
5 motorboat or vessel based on the results of the chemical test is not an issue.

6 **SECTION 5. AMENDMENT.** Subsection 1 of section 20.1-13.1-10 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 1. A person having an alcohol, other drug, or a combination thereof concentration of
9 at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the
10 performance of a chemical test within two hours after operating a motorboat or
11 vessel is under the influence of intoxicating liquor, drugs, or a combination thereof
12 at the time of operating a motorboat or vessel.

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

15 **20.1-13.1-12. Effect of evidence of chemical test.** This chapter does not limit the
16 introduction of any other competent evidence bearing on the question of whether the person
17 was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the
18 chemical test results show an alcohol, other drug, or a combination thereof concentration of at
19 least ~~ten~~ eight one-hundredths of one percent, the purpose of the evidence must be limited to
20 the issues of probable cause, whether an arrest was made prior to the administering of the test,
21 and the validity of the test results.

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

24 **20.1-15-05. Action following chemical test result for a hunter.** If a person submits
25 to a chemical test under section 20.1-15-01, 20.1-15-03, or 20.1-15-04 and the test shows that
26 person to have an alcohol, other drug, or a combination thereof concentration of at least ~~ten~~
27 eight one-hundredths of one percent by weight at the time of the performance of the test within
28 two hours after being afield with a gun or other firearm or a bow and arrow, the following
29 procedures apply:

30 1. The game warden or law enforcement officer shall immediately issue a statement
31 of intent to revoke, suspend, or deny hunting privileges and take possession of the

1 person's hunting license if it is then available. The issuance of a statement of
2 intent to revoke, suspend, or deny hunting privileges and the taking of possession
3 of the person's hunting license serves as the director's official notification to the
4 person of the director's intent to revoke, suspend, or deny hunting privileges in this
5 state.

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

25 3. The game warden or law enforcement officer, within five days of issuing the
26 statement of intent and taking possession of the hunting license, shall forward to
27 the director a certified written report in the form required by the director and the
28 person's hunting license taken under subsection 1 or 2. If the notice was given
29 and the license was taken because of the results of a chemical test, the report
30 must show that the game warden or officer had reasonable grounds to believe the
31 person had been afield with a gun or other firearm or a bow and arrow while in

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

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

11 **20.1-15-07. Administrative sanction for being afield with a gun or other firearm or**
12 **a bow and arrow while having certain drug concentrations.**

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

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

1 section 20.1-01-06 or the person's hunting privileges have once previously
2 been suspended or revoked under this chapter.

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

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

11 **SECTION 9. AMENDMENT.** Subsection 2 of section 20.1-15-08 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. If the issue to be determined by the hearing concerns suspension of hunting
14 privileges for being afield with a gun or other firearm or a bow and arrow while
15 having an alcohol, other drug, or a combination thereof concentration of at least
16 ~~ten~~ eight one-hundredths of one percent by weight, the hearing must be before a
17 hearing officer assigned by the director and at a time and place designated by the
18 director. The hearing must be recorded and its scope may cover only the issues of
19 whether the arresting warden or officer had reasonable grounds to believe the
20 person had been afield with a gun or other firearm or bow and arrow in violation of
21 section 20.1-01-06; whether the person was placed under arrest; whether the
22 person was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if
23 applicable, section 20.1-15-03; and whether the chemical test results show the
24 person had an alcohol, other drug, or a combination thereof concentration of at
25 least ~~ten~~ eight one-hundredths of one percent by weight. For purposes of this
26 section, a copy of a certified copy of an analytical report of a blood, urine, or saliva
27 sample from the director of the state crime laboratory or the director's designee, or
28 a certified copy of the checklist and test records from a certified breath test
29 operator establish prima facie the alcohol, other drug, or a combination thereof
30 concentration shown therein. Whether the person was informed that the privilege

1 to hunt might be suspended based on the results of the chemical test is not an
2 issue.

3 **SECTION 10. AMENDMENT.** Subsection 3 of section 20.1-15-11 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 3. A person having an alcohol, other drug, or a combination thereof concentration of
6 at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the
7 performance of a chemical test within two hours after being afield with a gun or
8 other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs,
9 or a combination thereof at the time of being afield with a gun or other firearm or
10 bow and arrow.

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

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

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

22 **39-24.1-05. Action following chemical test result for a snowmobile operator.** If a
23 person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the
24 test shows that person to have the presence of a drug in that person's body or an alcohol
25 concentration of at least ~~ten~~ eight one-hundredths of one percent by weight at the time of the
26 performance of the test within two hours after the operating of a snowmobile, the test is
27 evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.