

Sixty-first
Legislative Assembly
of North Dakota

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

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

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 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~~ eight 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.

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

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~~ eight 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~~ eight 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.

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

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.

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. The game warden or law enforcement officer shall immediately issue a statement 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

violation of section 20.1-01-06, 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 8. AMENDMENT. Section 20.1-15-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After the receipt of a person's hunting license, if taken under section 20.1-15-05, and 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 20.1-15-08, 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 reasonable grounds to arrest the person and chemical test results show that the arrested person had been 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~~ eight one-hundredths of one percent by weight at the time of the performance of a test within two hours after being afield with a gun or other firearm or a bow and arrow, the director shall suspend the person's hunting privileges as follows:
 - a. For one year if the person's record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 20.1-01-06 or the person's hunting privileges have not previously been suspended or revoked under this chapter.
 - b. For two years if the person's record shows that, within the five years preceding the date of the arrest, the person has once previously violated

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

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

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

SECTION 9. AMENDMENT. Subsection 2 of section 20.1-15-08 of 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~~ eight 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~~ eight 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 the privilege

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

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

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.

SECTION 11. 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 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 12. AMENDMENT. Section 39-24.1-05 of the North Dakota Century Code is amended and reenacted as follows:

39-24.1-05. Action following chemical test result for a snowmobile operator. If a person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the test shows that person to have the presence of a drug in that person's body or an alcohol 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 snowmobile, the test is evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.