

**Sixty-second Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 4, 2011**

SENATE BILL NO. 2113  
(Judiciary Committee)  
(At the request of the Attorney General)

AN ACT to amend and reenact sections 20.1-13.1-01 and 20.1-13.1-03, subsections 2 and 3 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, sections 20.1-13.1-10, 20.1-15-01, and 20.1-15-03, subsections 2 and 3 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, sections 20.1-15-11 and 20.1-15-15, subsection 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsections 2, 3, and 4 of section 39-20-03.1, subsections 2 and 3 of section 39-20-03.2, subsections 2 and 4 of section 39-20-05, and sections 39-20-07, 39-20-14, 39-24.1-01, 39-24.1-03, and 39-24.1-08 of the North Dakota Century Code, relating to chemical tests and the state crime laboratory.

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

**SECTION 1. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-01. Implied consent to determine alcohol concentration and drug content ~~presence of blood~~ drugs.**

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

**SECTION 2. AMENDMENT.** Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva,~~ or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 20.1-13.1-05 of the North Dakota Century Code are amended and reenacted as follows:

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~~individual 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~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual'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~~individual resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel serves as the director's official notification to the ~~person~~individual of the director's intent to prohibit the ~~person~~individual 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~~individual had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva,~~ or urine test for all tests administered at the direction of the game warden or officer.

**SECTION 4. AMENDMENT.** Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are 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 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~~individual had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual 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~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, or 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~~individual was informed that that ~~person~~individual may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, or urine, ~~or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, or a certified copy of the checklist and test records received by the director from a certified breath test operator, and any
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug concentration or the presence of other drugs, or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**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~~individual while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine 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~~An individual having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a motorboat or vessel is under the influence of

intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.

2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic-centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic-centimeters~~milliliters 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~~individual 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~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and file electronically post a written record of the approval with the director ~~and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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.
  - d. The material filed certified records electronically posted 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 certified supplemental material has records have the same force and effect as the material that it supplements records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ 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, or 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~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other 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 20.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-01. Implied consent to determine ~~alcoholic~~alcohol concentration and drug~~content~~presence of blood~~drugs~~.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test of the blood, breath, ~~saliva~~, or urine for the purpose of determining the ~~alcoholic, other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~in the individual's blood, breath, or urine. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~an individual incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the ~~alcoholic, or other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~in the individual's blood, breath, saliva, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 20.1-15-04, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of 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. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the chemical test determined appropriate will result in a revocation for up to four years of the ~~person's~~individual's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 7. AMENDMENT.** Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a

printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~an individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 20.1-15-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by ~~saliva or~~ urine sample or by drawing blood as provided in section 20.1-15-03 and the ~~person~~individual 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~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual'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~~individual resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the ~~person's~~individual's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the ~~person's~~individual's hunting license serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the director a certified written report in the form required by the director and the ~~person's~~individual's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the ~~person~~individual 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~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, ~~saliva, or urine~~ test for all tests administered at the direction of the game warden or officer.

**SECTION 9. AMENDMENT.** Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are 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 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~~individual had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual 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~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, ~~or 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~~individual was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.

4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer; ~~or~~ a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, ~~other drug concentration or the presence of other drugs,~~ or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**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~~individual 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, ~~concentration or presence of other~~ drugs, or a combination thereof, in the ~~person's~~individual's blood, ~~breath, or urine~~ 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~~An individual 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~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. ~~A person~~An individual having an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after 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. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic-centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic-centimeters~~milliliters of urine.
5. 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~~individual requested to take the chemical test.
6. 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~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and file electronically post a written record of the approval with the director ~~and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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.
  - d. The material filed certified records electronically posted 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 certified supplemental material has records have the same force and effect as the material that it supplements records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, or 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.

9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, ~~saliva~~, or urine at the time of the alleged act.
10. A signed statement from the individual medically qualified to draw 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 this evidence may be required.

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

**20.1-15-15. Screening tests.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the ~~person's~~individual's breath for the purpose of estimating the alcohol, ~~other drug, or a combination thereof~~ concentration in the person's blood~~individual's breath~~ upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol, ~~other drugs, or a combination thereof~~. A ~~person~~individual may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the ~~person~~individual that refusal of the ~~person~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's hunting privileges. If the ~~person~~individual refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the ~~person's~~individual's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke a ~~person's~~an individual's hunting privileges for refusing to submit to a screening test requested under this section if the ~~person~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor does any provision of sections 20.1-15-01 through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a ~~person's~~an individual's blood, breath, ~~saliva~~, or urine.

**SECTION 12. AMENDMENT.** Subsection 4 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~

- b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.

**SECTION 13. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-01. Implied consent to determine alcohol concentration and drug content presence of blood drugs.**

Any ~~person~~individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the alcohol, ~~other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, ~~or other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 39-20-03, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a ~~person~~an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the test determined appropriate will result in a revocation for up to four years of the ~~person's~~individual's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a ~~person~~an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the ~~person's~~individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the ~~person~~individual in custody.

**SECTION 14. AMENDMENT.** Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-02. Persons Individuals qualified to administer test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, ~~drug~~ concentration or presence of other drugs, or combination thereof, ~~content therein~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine

specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of the ~~person's~~individual's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional test by a ~~person~~individual does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or~~ saliva sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~individual by the law enforcement agency that administered the test or tests.

**SECTION 15. AMENDMENT.** Subsections 2, 3, and 4 of section 39-20-03.1 of the North Dakota Century Code are amended and reenacted as follows:

2. If a test administered under section 39-20-01 or 39-20-03 was by ~~saliva or~~ urine sample or by drawing blood as provided in section 39-20-02 and the ~~person~~individual tested is not a resident of an area in which the law enforcement officer has jurisdiction, the 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~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the ~~person~~individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall issue to that ~~person~~individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the ~~person~~individual who submitted to the blood, ~~or urine, or~~ saliva test, whether or not the ~~person~~individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the ~~person~~individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director. If the ~~person~~individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the ~~person~~individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the 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 officer.

**SECTION 16. AMENDMENT.** Subsections 2 and 3 of section 39-20-03.2 of the North Dakota Century Code are amended and reenacted as follows:

2. If the test was administered by ~~saliva~~ or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the ~~person~~individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and 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 officer. If the ~~person~~individual was issued a temporary operator's permit because of the ~~person's~~individual's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the ~~person~~individual was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the ~~person~~individual had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

**SECTION 17. AMENDMENT.** Subsections 2 and 4 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two 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 officer had reasonable grounds to believe the ~~person~~individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a ~~person~~an individual under twenty-one years of age, the ~~person~~individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the ~~person~~individual was placed under arrest, unless the ~~person~~individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the ~~person~~individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol

concentration of at least two 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, ~~or 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 concentration or the presence of drugs, or a combination thereof, shown therein. Whether the ~~person~~individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood; or urine; ~~or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer; or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory; or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate~~ that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.

**SECTION 18. AMENDMENT.** Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-07. Interpretation of chemical tests.**

Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol; concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine 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~~An individual having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol concentration in a ~~person~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor.
3. ~~A person~~An individual having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.

5. The results of the chemical analysis 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 analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
6. 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~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and file electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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.
  - d. The material filed certified records electronically posted 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 certified supplemental material has records have the same force and effect as the material that it supplements records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ analysis referred to in subsection 5 and which is 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 analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, ~~saliva,~~ or urine at the time of the alleged act. If the state toxicologist, the director of the state crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the

defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.

10. A signed statement from the individual medically qualified to draw 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 this evidence may be required.

**SECTION 19. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-14. Screening tests.**

Any ~~person~~individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the ~~person's~~individual's breath for the purpose of estimating the alcohol ~~content~~concentration in the person's~~blood~~individual's breath upon the request of a law enforcement officer who has reason to believe that the ~~person~~individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol. ~~A person~~An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the ~~person~~individual that refusal of the ~~person~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's driving privileges. If such ~~person~~individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such ~~person's~~individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke a ~~person's~~an individual's driving privileges for refusing to submit to a screening test requested under this section if the ~~person~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in a ~~person's~~an individual's blood, breath, saliva, or urine.

**SECTION 20. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-01. Implied consent to determine alcohol concentration and drug ~~content~~presence of blood~~drugs~~.**

~~A person~~An individual who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol, ~~other drug~~concentration or presence of other drugs, or combination thereof, ~~content~~of in the individual's blood, breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol, ~~or other drug~~concentration or presence of other drugs, or combination thereof, ~~content~~of in the individual's blood, breath, saliva, or

urine, approved by the director of the state crime laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~ individual incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the ~~person~~ individual, except ~~persons~~ individuals mentioned in section 39-24.1-04, under arrest and informing that ~~person~~ individual that the ~~person~~ individual is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~ individual charged that refusal of the ~~person~~ individual to submit to the chemical test determined appropriate will result in that ~~person~~ individual being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 21. AMENDMENT.** Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-03. ~~Persons~~ Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, ~~drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~ individual tested may have an individual of that ~~person's~~ individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~ individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~ individual does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the ~~person~~ individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, or urine, ~~or saliva~~ sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~ individual by the law enforcement agency that administered the chemical test.

**SECTION 22. AMENDMENT.** Section 39-24.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-08. Interpretation of chemical tests.**

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~ individual while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~ individual's blood, breath, or urine 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~~An individual having a drug in that ~~person's~~individual's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.
2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic-centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic-centimeters~~milliliters 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~~individual 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~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and file electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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.
  - d. The material filed~~certified records electronically posted~~ under this ~~subsection~~section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental ~~material~~has records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official,~~that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website 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, or 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~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other 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 individual medically qualified to draw 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 this evidence may be required.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_  
Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-second Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2113.

Senate Vote:    Yeas 47            Nays 0            Absent 0

House Vote:    Yeas 92            Nays 0            Absent 2

\_\_\_\_\_  
Secretary of the Senate

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2011.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2011,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State