

**Fifty-ninth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2005**

HOUSE BILL NO. 1088
(Judiciary Committee)
(At the request of the Attorney General)

AN ACT to amend and reenact subsections 4 and 5 of section 19-03.1-37, sections 20.1-13.1-01 and 20.1-13.1-03, subsection 2 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, subsections 3, 4, and 6 of section 20.1-13.1-10, sections 20.1-15-01 and 20.1-15-03, subsection 2 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, subsections 5, 6, and 8 of section 20.1-15-11, section 20.1-15-15, subsection 2 of section 28-32-01, subsection 2 of section 39-06.2-10.3, subsections 2 and 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsection 2 of section 39-20-03.1, subsections 2 and 4 of section 39-20-05, subsections 5, 6, and 8 of section 39-20-07, sections 39-20-13, 39-20-14, 39-24.1-01, and 39-24.1-03, and subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code, relating to the state toxicologist and the state crime laboratory.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 4 and 5 of section 19-03.1-37 of the North Dakota Century Code are amended and reenacted as follows:

4. In all prosecutions under this chapter, chapter 19-03.2, or chapter 19-03.4 involving the analysis of a substance or sample thereof, a certified copy of the analytical report signed by the ~~state toxicologist, or the toxicologist's designee, or the director of the state crime laboratory, or the director's designee,~~ must be accepted as prima facie evidence of the results of the analytical findings.
5. 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 the ~~state toxicologist or the director or an employee~~ of the state crime laboratory, ~~or any employee of either,~~ to testify at the preliminary hearing and trial of the issue at no cost to the defendant. If the ~~state toxicologist, the director or an employee~~ 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.

SECTION 2. 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 alcoholic and drug content of blood. Any person 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, or combination thereof, content of the blood. 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 incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state ~~toxicologist~~ 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, except persons mentioned in

section 20.1-13.1-04, under arrest and informing that person that the person 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 charged that refusal of the person to submit to the chemical test determined appropriate will result in that person 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 3. 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 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, or combination thereof, content of the blood. The director of the state ~~toxicologist~~ 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 person tested may have an individual of that person'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 charged. The failure or inability to obtain an additional chemical test by a person 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 who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 4. AMENDMENT. Subsection 2 of section 20.1-13.1-05 of the North Dakota Century Code is 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 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 ~~toxicologist~~ 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 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.

SECTION 5. 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 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 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 ~~toxicologist~~ 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.
4. At a hearing under this section, the regularly kept records of the director 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: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state ~~toxicologist~~ crime laboratory or the director's designee or a game warden 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 copy of a certified copy of a certificate of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state ~~toxicologist~~ 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.

SECTION 6. AMENDMENT. Subsections 3, 4, and 6 of section 20.1-13.1-10 of the North Dakota Century Code are amended and reenacted as follows:

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 ~~toxicologist~~ 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 ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The director of the state ~~toxicologist~~ 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 ~~toxicologist~~ crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

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

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ 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.

SECTION 7. 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 and drug content of blood. Any person 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, or combination thereof, content of the blood. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders a person 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, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state ~~toxicologist~~ 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, except persons mentioned in section 20.1-15-04, under arrest and informing that person that the person 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 charged that refusal of the person to submit to the chemical test determined appropriate will result in a revocation for up to four years of the person'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 8. AMENDMENT. Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

20.1-15-03. Persons 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, or combination thereof, content of the blood. The director of the state ~~toxicologist~~ 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 person tested may have an individual of that person'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 charged. The failure or inability to obtain an additional chemical test by a person 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 who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the game warden or law enforcement officer must be made available to that person by the department or law enforcement agency that administered the chemical test.

SECTION 9. AMENDMENT. Subsection 2 of section 20.1-15-05 of the North Dakota Century Code is 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 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 ~~toxicologist~~ 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 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 revoke, suspend, or deny hunting privileges and take possession of the person'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 hunting license serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny hunting privileges in this state.

SECTION 10. 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 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 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 ~~toxicologist~~ 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.
4. At a hearing under this section, the regularly kept records of the director 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: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state ~~toxicologist~~ crime laboratory

or the director's designee or a game warden 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 copy of a certified copy of a certificate of the director of the state ~~toxicologist~~ crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, other drug, or a combination thereof concentration received by the director from the director of the state ~~toxicologist~~ 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.

SECTION 11. AMENDMENT. Subsections 5, 6, and 8 of section 20.1-15-11 of the North Dakota Century Code are amended and reenacted are follows:

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 ~~toxicologist~~ 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 ~~toxicologist~~ crime laboratory or the director's designee. The director of the state ~~toxicologist~~ crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
6. The director of the state ~~toxicologist~~ 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 ~~toxicologist~~ crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state ~~toxicologist~~ crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state ~~toxicologist~~ crime laboratory or the director's designee in using the devices during the administration of the tests.

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

8. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state ~~toxicologist~~ 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.

SECTION 12. 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 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 breath

for the purpose of estimating the alcohol, other drug, or a combination thereof content of the person's blood 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 body contains alcohol, other drugs, or a combination thereof. A person 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 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 ~~toxicologist~~ crime laboratory or the director's designee and according to methods and with devices approved by the director of the state ~~toxicologist~~ 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 that refusal of the person to submit to a screening test will result in a revocation for up to four years of that person's hunting privileges. If the person refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the person'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 hunting privileges for refusing to submit to a screening test requested under this section if the person 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 certified by the director of the state ~~toxicologist~~ crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a person's blood, breath, saliva, or urine.

SECTION 13. AMENDMENT. Subsection 2 of section 28-32-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency must be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:
 - a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the classified service as authorized under section 54-44.3-07, and rules relating to state purchasing practices as required under section 54-44.4-04.
 - b. The adjutant general with respect to the division of emergency management.
 - c. The council on the arts.
 - d. The state auditor.
 - e. The department of commerce with respect to the division of economic development and finance.
 - f. The dairy promotion commission.
 - g. The education factfinding commission.
 - h. The educational technology council.

- i. The board of equalization.
- j. The board of higher education.
- k. The Indian affairs commission.
- l. The industrial commission with respect to the activities of the Bank of North Dakota, North Dakota housing finance agency, North Dakota municipal bond bank, North Dakota mill and elevator association, and North Dakota farm finance agency.
- m. The department of corrections and rehabilitation except with respect to the activities of the division of adult services under chapter 54-23.4.
- n. The pardon advisory board.
- o. The parks and recreation department.
- p. The parole board.
- q. The state fair association.
- r. The attorney general with respect to activities of the state toxicologist and the state crime laboratory.
- s. The board of university and school lands except with respect to activities under chapter 47-30.1.
- t. The administrative committee on veterans' affairs except with respect to rules relating to the supervision and government of the veterans' home and the implementation of programs or services provided by the veterans' home.
- u. The industrial commission with respect to the lignite research fund except as required under section 57-61-01.5.
- v. The attorney general with respect to guidelines adopted under section 12.1-32-15 for the risk assessment of sexual offenders, the risk level review process, and public disclosure of information under section 12.1-32-15.

SECTION 14. AMENDMENT. Subsection 2 of section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

- 2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample and the person 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 sample by the director of the state toxicologist crime laboratory or the director's designee showing that person had an alcohol concentration of at least four one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota commercial driver's license or permit and, within twenty-four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license, issue to that person a temporary driver's permit according to section 39-06.2-10.8.

SECTION 15. AMENDMENT. Subsections 2 and 4 of section 39-06.2-10.6 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 commercial motor vehicle while having an alcohol concentration of at least four 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 had been driving or was in actual physical control of a commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four 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 sample from the office of the director of the state ~~toxicologist~~ 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 shown therein. Whether the person was warned 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 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: any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the office of the director of the state ~~toxicologist~~ 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 copy of a certified copy of a certificate of the office of the director of the state ~~toxicologist~~ 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 office of the director of the state ~~toxicologist~~ 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.

SECTION 16. 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 and drug content of blood. Any person 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, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state ~~toxicologist~~ 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, except persons mentioned in section 39-20-03, under arrest and informing that person that the person 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 under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a person 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 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 in custody.

SECTION 17. AMENDMENT. Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

39-20-02. Persons 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, or combination thereof, content therein. The director of the state ~~toxicologist~~ 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 breath, saliva, or urine specimen. The person tested may have an individual of the person'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 charged. The failure or inability to obtain an additional test by a person 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 who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the test or tests.

SECTION 18. AMENDMENT. Subsection 2 of section 39-20-03.1 of the North Dakota Century Code is 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 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 ~~toxicologist~~ crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person 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 reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and 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 also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 19. 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 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 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 under twenty-one years of age, the person 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 was placed under arrest, unless the person 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 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 had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person 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, urine, or saliva sample from the director of the state toxicologist 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 shown therein. Whether the person 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 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: any copy of a certified copy of an analytical report of a blood, urine, or saliva sample received by the director from the director of the state toxicologist 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 copy of a certified copy of a certificate of the director of the state toxicologist 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 toxicologist crime laboratory, the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

SECTION 20. AMENDMENT. Subsections 5, 6, and 8 of section 39-20-07 of the North Dakota Century Code are amended and reenacted as follows:

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 toxicologist 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 toxicologist crime laboratory or the director's designee. The director of the state toxicologist 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 requested to take the chemical test.
6. The director of the state toxicologist 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 toxicologist crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state toxicologist crime laboratory or the director's designee shall prepare and file written record of the approval with the

director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the director of the state toxicologist crime laboratory or the director's designee in using the devices during the administration of the tests.

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

8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the director of the state toxicologist 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.

SECTION 21. AMENDMENT. Section 39-20-13 of the North Dakota Century Code is amended and reenacted as follows:

39-20-13. State toxicologist crime laboratory to examine specimens of fatalities in accidental deaths involving a motor vehicle - Record use. In cases of death resulting from a motor vehicle accident or other unnatural death occurring in a motor vehicle, the county coroner shall require that specimens of blood, urine, and vitreous humor be withdrawn from the body of the decedent within twenty-four hours after the decedent's death by a coroner, coroner's physician, or other qualified person, prior to embalming. The specimens must be collected and preserved by methods and techniques established by the director of the state toxicologist crime laboratory or the director's designee. The specimens so drawn must be sent to the director of the state toxicologist crime laboratory or the director's designee for analysis for alcohol, carbon monoxide, and other drug content. The director of the state toxicologist crime laboratory or the director's designee shall keep a record of all such examinations to be used for statistical purposes. The records must be made available to the director for use by the national highway traffic safety administration in analyzing fatal accidents. The information in the possession of the director may be obtained from the director of the state toxicologist crime laboratory or the director's designee only as provided in this section. Except as provided, the results of the examinations referred to in this section must be used only for statistical purposes, except that the results must be released upon the issuance of a subpoena duces tecum by a court of competent jurisdiction in any civil or criminal action. The cumulative results of the examinations, without identifying the individuals involved, must be disseminated to interested state and local officials and made public by the director of the state toxicologist crime laboratory or the director's designee. Any person drawing the specimens and any person making any examination under the terms of this section are immune from all liability, civil or criminal, that might otherwise be incurred or imposed. ~~The individual drawing the specimens must be paid a fee of five dollars by the state toxicologist for each acceptable specimen submitted for analysis under the requirements of this section.~~

SECTION 22. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests. Any person 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 breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person 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 body contains alcohol. A person 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 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 ~~toxicologist~~ crime laboratory or the director's designee and according to methods and with devices approved by the director of the state ~~toxicologist~~ 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 that refusal of the person to submit to a screening test will result in a revocation for up to three years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such person'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 driving privileges for refusing to submit to a screening test requested under this section if the person 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 certified by the director of the state ~~toxicologist~~ crime laboratory or the director's designee as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

SECTION 23. 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 and drug content of blood. A person 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, or combination thereof, content of the blood. 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, or combination thereof, content of the blood, breath, saliva, or urine, approved by the director of the state ~~toxicologist~~ 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 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, except persons mentioned in section 39-24.1-04, under arrest and informing that person that the person 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 charged that refusal of the person to submit to the chemical test determined appropriate will result in that person 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 24. AMENDMENT. Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

39-24.1-03. Persons 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, or combination thereof,

content of the blood. The director of the state toxicologist 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 person tested may have an individual of that person'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 charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the chemical test.

SECTION 25. AMENDMENT. Subsections 3, 4, and 6 of section 39-24.1-08 of the North Dakota Century Code are amended and reenacted as follows:

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 toxicologist 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 toxicologist crime laboratory or the director's designee. The director of the state toxicologist crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the person requested to take the chemical test.
4. The director of the state toxicologist 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 toxicologist crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the director of the state toxicologist crime laboratory or the director's designee shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
 - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
 - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
 - c. The operational checklist and forms prescribing the methods currently approved by the director of the state toxicologist crime laboratory or the director's designee in using the devices during the administration of the tests.

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

6. A certified copy of the analytical report of a blood, urine, or saliva test issued by the director of the state toxicologist 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.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-ninth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1088.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 45 Nays 0 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2005.

Approved at _____ M. on _____, 2005.

Governor

Filed in this office this _____ day of _____, 2005,

at _____ o'clock _____ M.

Secretary of State