

Fifty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2160

Introduced by

Senators Tallackson, Sand

Representatives Gorder, Henegar, Monson, Olson

1 A BILL for an Act to create and enact a new subsection to section 20.1-02-15.1 and chapter  
2 39-24.1 of the North Dakota Century Code, relating to implied consent for snowmobile  
3 operators; to amend and reenact subdivision c of subsection 5 of section 39-24-09 of the North  
4 Dakota Century Code, relating to driving a snowmobile while under the influence of an  
5 intoxicating liquor or drug; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subdivision c of subsection 5 of section 39-24-09 of the  
8 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 c. While under the influence of intoxicating liquor or a ~~controlled substance~~ drug  
10 as defined in section 39-24.1-01, or a combination thereof.

11 **SECTION 2. AMENDMENT.** A new subsection to section 20.1-02-15.1 of the North  
12 Dakota Century Code is created and enacted as follows:

13 To enforce chapter 39-24.1.

14 **SECTION 3.** Chapter 39-24.1 of the North Dakota Century Code is created and  
15 enacted as follows:

16 **39-24.1-01. Implied consent to determine alcoholic and drug content of blood.** A  
17 person who operates a snowmobile in this state is deemed to have given consent, and shall  
18 consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine  
19 for the purpose of determining the alcoholic, other drug, or combination thereof, content of the  
20 blood. As used in this chapter, the definitions in section 39-24-01 apply, and in addition,  
21 "chemical test" means any test or tests to determine the alcoholic, or other drug, or combination  
22 thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under  
23 this chapter; and "drug" means any drug or substance or combination of drugs or substances  
24 which renders a person incapable of safely operating a snowmobile. The chemical test must

1 be administered at the direction of a law enforcement officer only after placing the person,  
2 except persons mentioned in section 39-24.1-04, under arrest and informing that person that  
3 the person is or will be charged with the offense of operating a snowmobile while under the  
4 influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this  
5 chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of  
6 an arrest. The law enforcement officer shall also inform the person charged that refusal of the  
7 person to submit to the chemical test determined appropriate will result in that person being  
8 prohibited from operating a snowmobile for up to three years. The law enforcement officer shall  
9 determine the chemical test to be used. When a minor is taken into custody for violating  
10 subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently  
11 attempt to contact the minor's parent or legal guardian to explain the cause for the custody and  
12 the implied consent chemical testing requirements. Neither the law enforcement officer's efforts  
13 to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere  
14 with the administration of chemical testing requirements under this chapter.

15 **39-24.1-02. Chemical test of operator in serious bodily injury or fatal accident.**

16 Notwithstanding section 39-24.1-01 or 39-24.1-06, when the operator of a snowmobile is  
17 involved in an accident resulting in the death or serious bodily injury, as defined in section  
18 12.1-01-04, of another person, and there is probable cause to believe that the operator is in  
19 violation of subdivision c of subsection 5 of section 39-24-09, the operator may be compelled  
20 by a law enforcement officer to submit to a chemical test.

21 **39-24.1-03. Persons qualified to administer chemical test and opportunity for**

22 **additional test.** Only a physician, or a qualified technician, chemist, or registered nurse acting  
23 at the request of a law enforcement officer may withdraw blood for the purpose of determining  
24 the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply  
25 to the taking of a breath, saliva, or urine specimen. The person tested may have a physician,  
26 or a qualified technician, chemist, registered nurse, or other qualified person of that person's  
27 own choosing administer a chemical test in addition to any administered at the direction of a  
28 law enforcement officer with all costs of the additional chemical test to be the responsibility of  
29 the person charged. The failure or inability to obtain an additional chemical test by a person  
30 does not preclude the admission of the chemical test taken at the direction of a law  
31 enforcement officer. Upon the request of the person who is tested, a copy of the operational

1 checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva  
2 sample test taken at the direction of the law enforcement officer must be made available to that  
3 person by the law enforcement agency that administered the chemical test.

4 **39-24.1-04. Consent of person incapable of refusal not withdrawn.** Any person  
5 who is dead, unconscious, or otherwise in a condition rendering that person incapable of  
6 refusal is deemed not to have withdrawn the consent provided by section 39-24.1-01 and the  
7 chemical test may be given.

8 **39-24.1-05. Action following chemical test result for a snowmobile operator.** If a  
9 person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the  
10 test shows that person to have the presence of a drug in that person's body or an alcohol  
11 concentration of at least ten one-hundredths of one percent by weight at the time of the  
12 performance of the test within two hours after the operating of a snowmobile, the following  
13 procedures apply:

- 14 1. The law enforcement officer immediately shall issue a statement of intent to  
15 prohibit the person from operating a snowmobile. The issuance of a statement of  
16 intent to prohibit the person from operating a snowmobile serves as the director's  
17 official notification to the person of the director's intent to prohibit the person from  
18 operating a snowmobile in this state.
- 19 2. If a chemical test administered under section 39-24.1-01 or 39-24.1-04 was by  
20 saliva or urine sample or by drawing blood as provided in section 39-24.1-03 and  
21 the person tested does not reside in an area in which the law enforcement officer  
22 has jurisdiction, the law enforcement officer shall, on receiving the analysis of the  
23 saliva, urine, or blood from the state toxicologist and if the analysis shows that  
24 person had the presence of a drug in that person's body or an alcohol  
25 concentration of at least ten one-hundredths of one percent by weight, either  
26 proceed in accordance with subsection 1 during that person's reappearance within  
27 the officer's jurisdiction or notify a law enforcement agency having jurisdiction  
28 where the person resides. On that notification, that law enforcement agency  
29 immediately shall issue a statement of intent to prohibit the person from operating  
30 a snowmobile. The issuance of a statement of intent to prohibit the person from  
31 operating a snowmobile serves as the director's official notification to the person of

1           the director's intent to prohibit the person from operating a snowmobile in this  
2           state.

3           3. The law enforcement officer, within five days of issuing the statement of intent,  
4           shall forward to the director a certified written report in the form required by the  
5           director. If the statement was given because of the results of a chemical test, the  
6           report must show that the officer had probable cause to believe the person had  
7           been operating a snowmobile while in violation of subdivision c of subsection 5 of  
8           section 39-24-09, that the person was lawfully arrested, that the person was  
9           chemically tested under this chapter, and that the results of the test show that the  
10           person had a drug in that person's body or an alcohol concentration of at least ten  
11           one-hundredths of one percent by weight. In addition to the report, the law  
12           enforcement officer shall forward to the director a certified copy of the operational  
13           checklist and test records of a breath test and a copy of the certified copy of the  
14           analytical report for a blood, saliva, or urine test for all tests administered at the  
15           direction of the officer.

16           **39-24.1-06. Revocation of privilege to operate snowmobile upon refusal to submit**  
17 **to testing.**

18           1. If a person refuses to submit to testing under section 39-24.1-01, no chemical test  
19           may be given, but the law enforcement officer immediately shall issue to that  
20           person a statement of intent to prohibit the person from operating a snowmobile.  
21           The statement serves as the director's official notification to the person of the  
22           director's intent to prohibit the person from operating a snowmobile in this state  
23           and of the hearing procedures under this chapter. The director, upon the receipt of  
24           the certified written report of the law enforcement officer in the form required by the  
25           director, forwarded by the officer within five days after issuing the statement of  
26           intent, showing that the officer had probable cause to believe the person had been  
27           operating a snowmobile while in violation of subdivision c of subsection 5 of  
28           section 39-24-09 or had observed that the snowmobile was operated in a  
29           negligent, reckless, or hazardous manner as defined by the director by rule, that  
30           the person was lawfully arrested if applicable, and that the person had refused to  
31           submit to the chemical test under section 39-24.1-01, shall prohibit the person from

- 1           operating a snowmobile in this state for the appropriate period under this section.
- 2           The period for which a person is prohibited from operating a snowmobile under this
- 3           section is:
- 4           a.   One year if the person's record shows that within the five years preceding the
- 5                 most recent refusal under this section, the person has not been prohibited
- 6                 from operating a snowmobile for a violation of this chapter or for a violation of
- 7                 subdivision c of subsection 5 of section 39-24-09.
- 8           b.   Two years if the person's record shows that within the five years preceding
- 9                 the most recent refusal under this section, the person has once been
- 10                prohibited from operating a snowmobile for a violation of this chapter or for a
- 11                violation of subdivision c of subsection 5 of section 39-24-09.
- 12           c.   Three years if the person's record shows that within the five years preceding
- 13                 the most recent refusal under this section, the person has twice been
- 14                 prohibited from operating a snowmobile under this chapter or for a violation of
- 15                 subdivision c of subsection 5 of section 39-24-09 and the prohibitions resulted
- 16                 from at least two separate arrests.
- 17           2.   A person may not be prohibited from operating a snowmobile under this section if:
- 18                a.   No administrative hearing request is made under section 39-24.1-08;
- 19                b.   The person mails an affidavit to the director within ten days after the law
- 20                 enforcement officer issues the statement of intent. The affidavit must state
- 21                 that the person:
- 22                    (1)   Intends to voluntarily plead guilty to violating subdivision c of
- 23                         subsection 5 of section 39-24-09 within twenty-five days after the law
- 24                         enforcement officer issues the statement of intent;
- 25                    (2)   Agrees that the person may not operate a snowmobile for the
- 26                         appropriate period;
- 27                    (3)   Acknowledges the right to a section 39-24.1-08 administrative hearing
- 28                         and section 39-24.1-09 judicial review and voluntarily and knowingly
- 29                         waives these rights; and
- 30                    (4)   Agrees that the person may not operate a snowmobile for the
- 31                         appropriate period as provided under this section without an

1 administrative hearing or judicial review, if the person does not plead  
2 guilty within twenty-five days after the law enforcement officer issues  
3 the statement of intent, or the court does not accept the guilty plea, or  
4 the guilty plea is withdrawn;

5 c. The person pleads guilty to violating subdivision c of subsection 5 of section  
6 39-24-09 within twenty-five days after the law enforcement officer issues the  
7 statement of intent;

8 d. The court accepts the person's guilty plea and a notice of that fact is mailed to  
9 the director within twenty-five days after the law enforcement officer issues  
10 the statement of intent; and

11 e. A copy of the final order or judgment of conviction evidencing the acceptance  
12 of the person's guilty plea is received by the director prior to the end of the  
13 prohibition from operating a snowmobile.

14 3. The court shall mail a copy of an order granting a withdrawal of a guilty plea to  
15 violating subdivision c of subsection 5 of section 39-24-09 to the director within ten  
16 days after it is ordered. Upon receipt of the order, the director immediately shall  
17 prohibit the person from operating a snowmobile as provided under this section  
18 without providing an administrative hearing.

19 **29-24.1-07. Administrative sanction for operating snowmobile while having**  
20 **certain drug concentrations.** After the receipt of the certified report of a law enforcement  
21 officer and if no written request for hearing has been received from the arrested person under  
22 section 39-24.1-08, or if that hearing is requested and the findings, conclusion, and decision  
23 from the hearing confirm that the law enforcement officer had probable cause to arrest the  
24 person and chemical test results show that the arrested person was operating a snowmobile  
25 while having a drug in that person's body or an alcohol concentration of at least ten  
26 one-hundredths of one percent by weight at the time of the performance of a test within two  
27 hours after operating a snowmobile, the director shall prohibit the person from operating any  
28 snowmobile in this state as follows:

29 1. For ninety-one days if the person's record shows that, within the five years  
30 preceding the date of the arrest, the person has not previously violated

1           subdivision c of subsection 5 of section 39-24-09 or the person has not been  
2           prohibited from operating a snowmobile under this chapter.

3           2. For three hundred sixty-four days if the person's record shows that, within the five  
4           years preceding the date of the arrest, the person has once previously violated  
5           subdivision c of subsection 5 of section 39-24-09 or the person has once been  
6           prohibited from operating a snowmobile under this chapter.

7           3. For two years if the person's record shows that within the five years preceding the  
8           date of the arrest, the person has twice been prohibited from operating a  
9           snowmobile under this chapter, or for a violation of subdivision c of subsection 5 of  
10          section 39-24-09, or any combination thereof, and the prohibitions resulted from at  
11          least two separate arrests.

12          **39-24.1-08. Administrative hearing on request.**

13          1. Before prohibiting a person from operating a snowmobile under section 39-24.1-06  
14          or 39-24.1-07, the director shall afford that person an opportunity for a hearing if  
15          the person mails a request for the hearing to the director within ten days after the  
16          date the law enforcement officer issued a statement of intent to prohibit the person  
17          from operating a snowmobile. The hearing must be held within twenty-five days  
18          after the date of issuance of the statement of intent, but the hearing officer may  
19          extend the hearing to within thirty-five days after the issuance of the statement of  
20          intent if good cause is shown.

21          2. If the issue to be determined by the hearing concerns the prohibition from  
22          operating a snowmobile for operating a snowmobile while having a drug in that  
23          person's body or an alcohol concentration of at least ten one-hundredths of one  
24          percent by weight, the hearing must be before a hearing officer assigned by the  
25          director and at a time and place designated by the director. The hearing must be  
26          recorded and its scope may cover only the issues of whether the arresting officer  
27          had probable cause to believe the person had been operating a snowmobile in  
28          violation of subdivision c of subsection 5 of section 39-24-09; whether the person  
29          was placed under arrest; whether the person was tested in accordance with  
30          section 39-24.1-01 or 39-24.1-04 and, if applicable, section 39-24.1-03; and  
31          whether the chemical test results show the person had a drug in that person's body

- 1           or an alcohol concentration of at least ten one-hundredths of one percent by  
2           weight. For purposes of this section, a copy of a certified copy of an analytical  
3           report of a blood, urine, or saliva sample from the state toxicologist, or a certified  
4           copy of the checklist and test records from a certified breath test operator establish  
5           prima facie the alcohol, other drug, or a combination thereof concentration shown  
6           therein. Whether the person was informed that that person may be prohibited from  
7           operating a snowmobile based on the results of the chemical test is not an issue.
- 8           3. If the issue to be determined by the hearing concerns the prohibition from  
9           operating a snowmobile for refusing to submit to a chemical test under section  
10           39-24.1-01, the hearing must be before a hearing officer assigned by the director  
11           at a time and place designated by the director. The hearing must be recorded.  
12           The scope of a hearing for refusing to submit to a chemical test under section  
13           39-24.1-01 may cover only the issues of whether a law enforcement officer had  
14           probable cause to believe the person had been operating a snowmobile in violation  
15           of subdivision c of subsection 5 of section 39-24-09; whether the person was  
16           placed under arrest; and whether that person refused to submit to the chemical  
17           test.
- 18           4. At a hearing under this section, the regularly kept records of the director may be  
19           introduced. Those records establish prima facie their contents without further  
20           foundation. For purposes of this chapter, any copy of a certified copy of an  
21           analytical report of a blood, urine, or saliva sample received by the director from  
22           the state toxicologist or a law enforcement officer, a certified copy of the checklist  
23           and test records received by the director from a certified breath test operator, and  
24           any copy of a certified copy of a certificate of the state toxicologist relating to  
25           approved methods, devices, operators, materials, and checklists used for testing  
26           for alcohol, other drug, or a combination thereof concentration received by the  
27           director from the state toxicologist or the clerk of district court, are regularly kept  
28           records of the director.
- 29           5. At the close of the hearing, the hearing officer shall notify the person of the hearing  
30           officer's findings of fact, conclusions of law, and decision based on the findings and  
31           conclusions and shall immediately deliver to the person a copy of the decision. If



1           the hearing officer does not find in favor of the person, the copy of the decision  
2           serves as the director's official notification to the person that the person is  
3           prohibited from operating a snowmobile in this state. The hearing officer shall  
4           report the findings, conclusions, and decisions to the director within ten days of the  
5           conclusion of the hearing.

6           6. If the person who requested a hearing under this section fails to appear at the  
7           hearing without justification, the right to the hearing is waived, and the hearing  
8           officer's determination on prohibition of the person from operating a snowmobile  
9           will be based on the written request for hearing, law enforcement officer's report,  
10           and other evidence as may be available. The hearing officer shall, on the date for  
11           which the hearing is scheduled, mail to the person, by regular mail, at the address  
12           on file with the director, or at any other address for the person or the person's legal  
13           representative supplied in the request for hearing, a copy of the decision which  
14           serves as the director's official notification to the person that the person is  
15           prohibited from operating a snowmobile in this state for the appropriate period.  
16           Even if the person for whom the hearing is scheduled fails to appear at the  
17           hearing, the hearing is deemed to have been held on the date for which it is  
18           scheduled for purposes of appeal under section 39-24.1-09.

19           **39-24.1-09. Judicial review.** Any person who has been prohibited from operating a  
20           snowmobile by the decision of the hearing officer under section 39-24.1-08 may appeal within  
21           seven days after the date of the hearing under section 39-24.1-08 as shown by the date of the  
22           hearing officer's decision, notwithstanding section 28-32-15, by serving on the director and filing  
23           a notice of appeal and specifications of error in the district court in the county where the events  
24           occurred for which the demand for a chemical test was made, or in the county in which the  
25           administrative hearing was held. The court shall set the matter for hearing, and the petitioner  
26           shall give twenty days' notice of the hearing to the director and to the hearing officer who  
27           rendered the decision. Neither the director nor the court may stay the decision pending  
28           decision on appeal. Within fifteen days after receipt of the notice of appeal, the director or the  
29           hearing officer who rendered the decision shall file in the office of the clerk of court to which the  
30           appeal is taken a certified transcript of the testimony and all other proceedings. This record is  
31           the record on which the appeal must be determined. No additional evidence may be heard.

1 The court shall affirm the decision of the director or hearing officer unless it finds the evidence  
2 insufficient to warrant the conclusion reached by the director or hearing officer. The court may  
3 direct that the matter be returned to the director or hearing officer for rehearing and the  
4 presentation of additional evidence.

5 **39-24.1-10. Interpretation of chemical tests.** Upon the trial of any action or  
6 proceeding arising out of acts alleged to have been committed by any person while operating a  
7 snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof,  
8 evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the  
9 time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is  
10 admissible. For the purpose of this section:

- 11 1. A person having a drug in that person's body or an alcohol concentration of at least  
12 ten one-hundredths of one percent by weight at the time of the performance of a  
13 chemical test within two hours after operating a snowmobile is under the influence  
14 of intoxicating liquor, drugs, or a combination thereof at the time of operating a  
15 snowmobile.
- 16 2. Alcohol concentration is based upon grams of alcohol per one hundred cubic  
17 centimeters of blood or grams of alcohol per two hundred ten liters of alveolar air  
18 or grams of alcohol per sixty-seven cubic centimeters of urine.
- 19 3. The results of the chemical test must be received in evidence when it is shown that  
20 the sample was properly obtained and the test was fairly administered, and if the  
21 test is shown to have been performed according to methods and with devices  
22 approved by the state toxicologist, and by an individual possessing a certificate of  
23 qualification to administer the test issued by the state toxicologist. The state  
24 toxicologist is authorized to approve satisfactory devices and methods of chemical  
25 tests and determine the qualifications of individuals to conduct such tests, and  
26 shall issue a certificate to every qualified operator. An operator shall exhibit the  
27 certificate upon demand of the person requested to take the chemical test.
- 28 4. The state toxicologist may appoint, train, certify, and supervise field inspectors of  
29 breath testing equipment and its operation, and the inspectors shall report the  
30 findings of any inspection to the state toxicologist for appropriate action. Upon  
31 approval of the methods or devices, or both, required to perform the tests and the

1 persons qualified to administer them, the state toxicologist shall prepare and file  
2 written record of the approval with the director and the clerk of the district court in  
3 each county and shall include in the record:  
4 a. An annual register of the specific testing devices currently approved, including  
5 serial number, location, and the date and results of last inspection.  
6 b. An annual register of currently qualified and certified operators of the devices,  
7 stating the date of certification and its expiration.  
8 c. The operational checklist and forms prescribing the methods currently  
9 approved by the state toxicologist in using the devices during the  
10 administration of the tests.

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

14 5. Copies of the records referred to in subsections 3 and 4, certified by the clerk of  
15 the district court, must be admitted as prima facie evidence of the matters stated in  
16 the records.

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

20 7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal  
21 proceeding may subpoena, without cost to the defendant, the person who  
22 conducted the chemical test referred to in this section to testify at the trial on the  
23 issue of the amount of alcohol, drugs, or a combination thereof in the defendant's  
24 blood, breath, saliva, or urine at the time of the alleged act.

25 8. A signed statement from the nurse or medical technician drawing the blood sample  
26 for testing as set forth in subsection 3 is prima facie evidence that the blood  
27 sample was properly drawn and no further foundation for the admission of such  
28 evidence may be required.

29 **39-24.1-11. Proof of refusal admissible in any action or proceeding.** If the person  
30 under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action  
31 or proceeding arising out of acts alleged to have been committed while the person was

1 operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination  
2 thereof.

3 **39-24.1-12. Effect of evidence of chemical test.** This chapter does not limit the  
4 introduction of any other competent evidence bearing on the question of whether the person  
5 was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the  
6 chemical test results show a drug or an alcohol concentration of at least ten one-hundredths of  
7 one percent, the purpose of the evidence must be limited to the issues of probable cause,  
8 whether an arrest was made prior to the administering of the test, and the validity of the test  
9 results.

10 **39-24.1-13. Liability.** Any licensed physician, nurse, technician, or an employee of a  
11 hospital who draws blood from any person pursuant to a request of any arresting officer is not  
12 liable in any civil action for damages arising out of the act except for gross negligence.

13 **39-24.1-14. Operation of snowmobile during period of prohibition - Penalty.** Any  
14 person who operates a snowmobile in this state during the period the person is prohibited from  
15 operating a snowmobile under this chapter is guilty of a class A misdemeanor.