

## **CHAPTER 39-24.1 SNOWMOBILE OPERATOR REGULATION**

### **39-24.1-01. Implied consent to determine alcohol concentration and presence of drugs.**

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, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, 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 concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, 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 an 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 individual, except individuals mentioned in section 39-24.1-04, under arrest and informing that individual that the 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 27-20.4-05 satisfies the requirement of an arrest. The law enforcement officer shall also inform the individual charged that refusal of the individual to submit to the chemical test determined appropriate will result in that 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.

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

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

### **39-24.1-03. 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 concentration or presence of other drugs, or combination thereof, 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 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 individual tested may have an individual of that 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 individual charged. The failure or inability to obtain an additional chemical test by an individual does not preclude the admission of the chemical test taken at the direction

of a law enforcement officer. Upon the request of the 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 sample test taken at the direction of the law enforcement officer must be made available to that individual by the law enforcement agency that administered the chemical test.

**39-24.1-04. Consent of person incapable of refusal not withdrawn.**

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

**39-24.1-05. Action following chemical test result for a snowmobile operator.**

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

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

1. If a person refuses to submit to testing under section 39-24.1-01, no chemical test may be given, but the law enforcement officer immediately shall issue to that person a summons or otherwise notify that person in writing to appear at the time and place specified in the summons or notice. The hearing and any appeal must be conducted as provided in section 39-06.1-03. If the person requests a hearing at a time and date other than as stated in the summons or notice, that person must post an appearance bond as required by subsection 2 of section 39-06.1-03. Upon establishing at the hearing by a preponderance of the evidence that the officer had probable cause to believe the person had been operating a snowmobile while in violation of subdivision c of subsection 5 of section 39-24-09 or had observed that the snowmobile was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 39-24.1-01, the court shall prohibit the person from operating a snowmobile on all public land or private land with public access for the appropriate period under this section, and shall impose a noncriminal statutory fee of five hundred dollars. A violation of this section must be reported to the parks and recreation department. The department shall keep a record of all reported violations. The period for which a person is prohibited from operating a snowmobile under this section is:
  - a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
  - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has once been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
  - c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a snowmobile under this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09 and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a snowmobile under this section if:
  - a. The person files an affidavit with the court before the time set for hearing in the summons or notice, or, with the permission of the court, within five days after the hearing. The affidavit must state that the person:

- (1) Intends to voluntarily plead guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense;
  - (2) Agrees that the person may not operate a snowmobile for the appropriate period defined in section 39-24.1-07;
  - (3) Acknowledges the right to a section 39-06.1-03 administrative hearing and section 39-06.1-03 judicial review and voluntarily and knowingly waives these rights; and
  - (4) Agrees that the person may not operate a snowmobile for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within thirty days after the date of the offense, or the court does not accept the guilty plea, or the guilty plea is withdrawn; and
- b. The person pleads guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense.

**39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.**

Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court shall impose the following minimum penalties:

1. Notwithstanding subsection 7 of section 12.1-32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has not violated subdivision c of subsection 5 of section 39-24-09 or the person has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.
2. If the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the person's record indicates that, within the five years preceding the date of the offense, the person has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the person has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

**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 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 individual's blood, breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, or urine is admissible. For the purpose of this section:

1. An individual having a drug in that 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 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.
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 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 individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and electronically post a written record of the approval with the 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 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 records have the same force and effect as the 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 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 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. Superseded by N.D.R.Ev., Rule 707.
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.

**39-24.1-09. Proof of refusal admissible in any action or proceeding.**

If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof.

**39-24.1-10. Effect of evidence of chemical test.**

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

**39-24.1-11. Liability.**

Any individual medically qualified to draw blood or any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

**39-24.1-12. Operation of snowmobile during period of prohibition - Penalty.**

Any person who operates a snowmobile on any public land or private land with public access during the period the person is prohibited from operating a snowmobile under this chapter is guilty of a class A misdemeanor.

**39-24.1-13. Fleeing or attempting to elude a peace officer.**

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:
  - a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
  - b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform or prominently displays the officer's badge of office.
2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.