

**FIRST ENGROSSMENT
with Senate Amendments**

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1017

Introduced by

Appropriations Committee

(At the request of the Governor)

1 A BILL for an Act to provide an appropriation for defraying the expenses of the office of
2 administrative hearings; to amend and reenact sections 39-01-16, 39-02-03.1, 39-06-34,
3 39-06.1-11, 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8, subsection 1 of section 39-20-03.1,
4 section 39-20-03.2, subsection 1 of section 39-20-04, sections 39-20-05 and 39-20-06, and
5 subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of
6 administrative hearings from the department of transportation to the office of administrative
7 hearings; to provide for transition; and to provide an effective date.

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

9 **SECTION 1. BASE LEVEL FUNDING INFORMATION.** The amounts identified in this
10 section represent the base level funding component appropriated to the office of administrative
11 hearings in section 3 of this Act as follows:

12 Salaries and wages	\$1,042,927
13 Operating expenses	<u>266,917</u>
14 Total special funds appropriation - Base level	\$1,309,844

15 **SECTION 2. FUNDING ADJUSTMENTS OR ENHANCEMENTS INFORMATION.** The
16 amounts identified in this section represent the funding adjustments or enhancements to the
17 base funding level for the office of administrative hearings which are included in the
18 appropriation in section 3 of this Act as follows:

19 Salaries and wages	\$571,989
20 Operating expenses	<u>159,442</u>
21 Total special funds appropriation - Adjustments/enhancements	\$731,431

22 **SECTION 3. APPROPRIATION.** The funds provided in this section, or so much of the
23 funds as may be necessary, are appropriated from special funds derived from income to the

1 office of administrative hearings for the purpose of defraying the expenses of that agency, for
2 the biennium beginning July 1, 2007, and ending June 30, 2009, as follows:

3 Salaries and wages	\$1,614,916
4 Operating expenses	<u>426,359</u>
5 Total special funds appropriation	\$2,041,275

6 **SECTION 4. AMENDMENT.** Section 39-01-16 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-01-16. Hearing on alleged violations.**

9 1. Any person having information that a licensed dealer has violated any provisions of
10 this title may file with the director an affidavit specifically ~~setting forth such~~ stating
11 the facts of the violation. Upon receipt of ~~such~~ the affidavit, the director shall
12 investigate the violation alleged in the affidavit. If, after investigation, the director
13 determines that the dealer's license will be revoked or suspended, a notice of
14 intent to revoke or suspend the license must be mailed to the dealer by certified
15 mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~
16 before the effective date of the license revocation or suspension. A record of ~~such~~
17 hearings the hearing must be made by stenographic notes or use of an electronic
18 recording device.

19 2. If after ~~such~~ the hearing the ~~director~~ administrative law judge finds the violation
20 charged in the affidavit has been proved by the evidence, an order must be served
21 on the licensee revoking or suspending the dealer's license for a period of time to
22 be determined by the director. ~~Such~~ The action may be appealed to the district
23 court by following the appeal procedure set forth in chapter 28-32, except that the
24 order revoking or suspending the license is ineffective while the appeal is pending.

25 ~~The director has the power to appoint an administrative hearing officer to conduct the~~
26 ~~hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing~~
27 ~~officer shall submit the findings to the director for consideration and final decision.~~

28 3. Any witness called by the prosecution, except a peace officer while on duty, ~~shall~~
29 must receive the same fees and mileage as a witness in a civil case in district
30 court.

1 **SECTION 5. AMENDMENT.** Section 39-02-03.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before**
4 **cancellation, revocation, suspension, or rescision of a motor vehicle registration or a**
5 **certificate of title to a motor vehicle.** ~~Whenever, under~~ Under the laws pertaining to the
6 cancellation, revocation, suspension, or rescision of a registration of a motor vehicle or a
7 certificate of title to a motor vehicle, if a determination has been made to cancel, revoke,
8 suspend, or rescind either the registration or certificate of title, or both, the director shall provide
9 the legal and registered owner with notice of ~~such~~ the cancellation, revocation, suspension, or
10 rescision and the opportunity for a hearing. ~~Such~~ The notice must be sent by registered or
11 certified mail, return receipt requested, not less than ten days ~~prior to~~ before the effective date
12 of the cancellation, revocation, suspension, or rescision.

13 **SECTION 6. AMENDMENT.** Section 39-06-34 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **39-06-34. Director may require reexamination.** In addition to other powers set forth
16 in this chapter, the director, having good cause to believe that a licensed operator is
17 incompetent or otherwise not qualified to be licensed, may upon written notice of at least five
18 days to the licensee require the licensee to submit to such physical, mental, or driver's
19 examination as may be deemed necessary. If the director has good cause to believe that the
20 licensed operator presents an immediate danger to the motoring public, the director may
21 immediately, and without prior notice, suspend the operator's license pending the examination.
22 The notice of suspension must provide the operator with the opportunity for a hearing within
23 five days of the receipt of the notice of suspension. When a hearing is requested it must be
24 conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's
25 recommended decision must be rendered within two days of the conclusion of the hearing.
26 Upon the conclusion of such examination the director shall take action as may be appropriate
27 and may suspend or revoke the license of such person or permit the licensee to retain the
28 license, or may issue a license subject to restrictions as permitted under section 39-06-17.
29 Refusal or neglect of the licensee to submit to such examination shall be grounds for
30 suspension or revocation of the license.

1 **SECTION 7. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 4 1. Except as provided under subsection 2, if the director has suspended a license
5 under section 39-06.1-10 or has extended a suspension or revocation under
6 section 39-06-43, upon receiving written application from the offender affected, the
7 director may for good cause issue a temporary restricted operator's license valid
8 for the remainder of the suspension period after seven days of the suspension
9 period have passed.
- 10 2. If the director has suspended a license under chapter 39-20, or after a violation of
11 section 39-08-01 or equivalent ordinance, upon written application of the offender
12 the director may issue for good cause a temporary restricted license that takes
13 effect after thirty days of the suspension have been served after a first offense
14 under section 39-08-01 or chapter 39-20. The director may not issue a temporary
15 restricted license to any offender whose operator's license has been revoked
16 under section 39-20-04 or suspended upon a second or subsequent offense under
17 section 39-08-01 or chapter 39-20, except that a temporary restricted license may
18 be issued for good cause if the offender has not committed an offense for a period
19 of two years before the date of the filing of a written application that must be
20 accompanied by a report from an addiction facility or if the offender is participating
21 in the drug court program and has not committed an offense for a period of three
22 hundred sixty-five days before the date of the filing of a written application that
23 must be accompanied by a recommendation from the district court. The director
24 may ~~conduct~~ request a hearing for the purposes of obtaining information, reports,
25 and evaluations from courts, law enforcement, and citizens to determine the
26 offender's conduct and driving behavior during the prerequisite period of time. The
27 director may also require that an ignition interlock device be installed in the
28 offender's vehicle.
- 29 3. The director may not issue a temporary restricted license for a period of license
30 revocation or suspension imposed under subsection 5 of section 39-06-17, section
31 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license

1 may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it
2 could have been issued had the suspension resulted from in-state conduct.

3 4. A restricted license issued under this section is solely for the use of a motor
4 vehicle during the licensee's normal working hours and may contain any other
5 restrictions authorized by section 39-06-17. Violation of a restriction imposed
6 according to this section is deemed a violation of section 39-06-17.

7 **SECTION 8. AMENDMENT.** Section 39-06.2-10.6 of the North Dakota Century Code
8 is amended and reenacted as follows:

9 **39-06.2-10.6. Administrative hearing on request.**

10 1. Before issuing an order of suspension, revocation, or disqualification under section
11 39-06.2-10, the director shall afford that person an opportunity for a hearing as
12 provided by section 39-20-05, if the person mails a request for the hearing to the
13 director within ten days after the date of issuance of the temporary driver's permit.
14 2. If the issue to be determined by the hearing concerns license suspension for
15 operating a commercial motor vehicle while having an alcohol concentration of at
16 least four one-hundredths of one percent by weight, the hearing must be before a
17 ~~hearing officer assigned by the director~~ an administrative law judge and at a time
18 and place designated by the director of the office of administrative hearings. The
19 hearing must be recorded and its scope may cover only the issues of whether the
20 arresting officer had reasonable grounds to believe the person had been driving or
21 was in actual physical control of a commercial motor vehicle in violation of section
22 39-06.2-10.1, whether the person was lawfully detained, whether the person was
23 tested in accordance with section 39-06.2-10.2, and whether the test results show
24 the person had an alcohol concentration of at least four one-hundredths of one
25 percent by weight. For purposes of this section, a copy of a certified copy of an
26 analytical report of a blood or urine sample from the office of the director of the
27 state crime laboratory or the director's designee, or a certified copy of the checklist
28 and test records from a certified breath test operator establish prima facie the
29 alcohol concentration shown therein. Whether the person was warned that the
30 privilege to drive might be suspended based on the results of the test is not an
31 issue.

- 1 3. If the issue to be determined by the hearing concerns license revocation for
2 refusing to submit to a test under section 39-06.2-10.2, the hearing must be before
3 ~~a hearing officer assigned by the director~~ an administrative law judge at a time and
4 place designated by the director of the office of administrative hearings. The
5 hearing must be recorded. The scope of a hearing for refusing to submit to a test
6 under section 39-06.2-10.2 may cover only the issues of whether a law
7 enforcement officer had reasonable grounds to believe the person had been
8 driving or was in actual physical control of a commercial motor vehicle in violation
9 of section 39-06.2-10.1, whether the person was lawfully detained, and whether
10 that person refused to submit to the test or tests. The scope of a hearing for
11 refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover
12 only the issues of whether the law enforcement officer had reason to believe the
13 person committed a moving traffic violation or was involved in a traffic accident as
14 a driver, whether in conjunction with the violation or the accident the officer has,
15 through the officer's observations, formulated an opinion that the person's body
16 contains alcohol and, whether the person refused to submit to the onsite screening
17 test. Whether the person was warned that the privilege to drive would be revoked
18 or denied for refusal to submit to the test or tests is not an issue.
- 19 4. At a hearing under this section, the regularly kept records of the director may be
20 introduced. Those records establish prima facie their contents without further
21 foundation. For purposes of this chapter, the following are deemed regularly kept
22 records of the director: any copy of a certified copy of an analytical report of a
23 blood or urine sample received by the director from the director of the state crime
24 laboratory or the director's designee or a law enforcement officer, a certified copy
25 of the checklist and test records received by the director from a certified breath test
26 operator, and any copy of a certified copy of a certificate of the director of the state
27 crime laboratory or the director's designee relating to approved methods, devices,
28 operators, materials, and checklists used for testing for alcohol concentration
29 received by the director from the director of the state crime laboratory or the
30 director's designee, or the recorder, unless the board of county commissioners has
31 designated a different official to maintain the certificate.

- 1 5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify
2 the person of the ~~hearing officer's~~ administrative law judge's findings of fact,
3 conclusions of law, and decision based on the findings and conclusions and shall
4 immediately deliver to the person a copy of the decision. If the ~~hearing officer~~
5 administrative law judge does not find in favor of the person, the copy of the
6 decision serves as the director's official notification to the person of the revocation,
7 suspension, or denial of driving privileges in this state. If the ~~hearing officer~~
8 administrative law judge finds, based on a preponderance of the evidence, that the
9 person refused a test under section 39-06.2-10.2 or that the person had an alcohol
10 concentration of at least four one-hundredths of one percent by weight, the ~~hearing~~
11 ~~officer shall~~ administrative law judge immediately shall take possession of the
12 person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~
13 administrative law judge does not find against the person, the ~~hearing officer~~
14 administrative law judge shall sign, date, and mark on the person's permit an
15 extension of driving privileges for the next twenty days and shall return the permit
16 to the person. The ~~hearing officer~~ administrative law judge shall report the
17 findings, conclusions, and decisions to the director within ten days of the
18 conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has
19 determined in favor of the person, the director shall return the person's commercial
20 driver's license by regular mail to the address on file with the director under section
21 39-06.2-08.
- 22 6. If the person who requested a hearing under this section fails to appear at the
23 hearing without justification, the right to the hearing is waived, and the ~~hearing~~
24 ~~officer's~~ administrative law judge's determination on license revocation,
25 suspension, or denial will be based on the written request for hearing, law
26 enforcement officer's report, and other evidence as may be available. On the date
27 for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge
28 shall mail to the person, by regular mail, at the address on file with the director
29 under section 39-06-20, or at any other address for the person or the person's
30 legal representative supplied in the request for hearing, a copy of the decision
31 which serves as the director's official notification to the person of the revocation,

1 suspension, or denial of driving privileges in this state. Even if the person for
2 whom the hearing is scheduled fails to appear at the hearing, the hearing is
3 deemed to have been held on the date for which it is scheduled for purposes of
4 appeal under section 39-06.2-10.7.

5 7. An administrative law judge assigned by the director of the office of administrative
6 hearings to conduct a hearing under this section shall maintain and secure all
7 related documents and evidence to maintain the privacy of records that have been
8 affirmed which contain personal information.

9 **SECTION 9. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code
10 is amended and reenacted as follows:

11 **39-06.2-10.7. Judicial review.** Any ~~person whose commercial driver's license or~~
12 ~~privilege has been suspended, revoked, or denied~~ party adversely affected by the decision of
13 the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within
14 seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of
15 the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by
16 serving on the director and filing a notice of appeal and specifications of error in the district
17 court in the county where the events occurred for which the demand for a test was made, or in
18 the county in which the administrative hearing was held. The court shall set the matter for
19 hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to~~
20 ~~the hearing officer who rendered the decision. Neither the director nor the.~~ The court may not
21 stay the decision pending decision on appeal. Within twenty days after receipt of the notice of
22 appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the
23 clerk of court to which the appeal is taken a certified transcript of the testimony and all other
24 proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not
25 hear additional evidence may be heard. The court shall affirm the decision of the ~~director or~~
26 ~~hearing officer~~ administrative law judge unless ~~it~~ the court finds the evidence insufficient to
27 warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The
28 court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law
29 judge for rehearing and the presentation of additional evidence.

30 **SECTION 10. AMENDMENT.** Section 39-06.2-10.8 of the North Dakota Century Code
31 is amended and reenacted as follows:

1 **39-06.2-10.8. Temporary driver's permit.** A temporary driver's permit extends driving
2 privileges for twenty-five days, unless earlier terminated by the decision of ~~a hearing officer~~ an
3 administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign
4 and note the date of issuance on the temporary driver's permit. The temporary driver's permit
5 serves as the director's official notification to the driver of the director's intent to revoke,
6 suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be
7 issued for the period covered by an out-of-service order.

8 **SECTION 11. AMENDMENT.** Subsection 1 of section 39-20-03.1 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. The law enforcement officer shall immediately take possession of the person's
11 operator's license if it is then available and shall immediately issue to that person a
12 temporary operator's permit if the person then has valid operating privileges,
13 extending driving privileges for the next twenty-five days, or until earlier terminated
14 by the decision of ~~a hearing officer~~ an administrative law judge under section
15 39-20-05. The law enforcement officer shall sign and note the date on the
16 temporary operator's permit. The temporary operator's permit serves as the
17 director's official notification to the person of the director's intent to revoke,
18 suspend, or deny driving privileges in this state.

19 **SECTION 12. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **39-20-03.2. Action following test result or on refusing test by nonresident**
22 **operator.** If a person licensed in another state refuses in this state to submit to a test provided
23 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,
24 or 39-20-03 and the test results show the person to have an alcohol concentration of at least
25 eight one-hundredths of one percent by weight or, with respect to a person under twenty-one
26 years of age, an alcohol concentration of at least two one-hundredths of one percent by weight
27 at the time of performance of a test within two hours after driving or being in physical control of
28 a motor vehicle, the following procedures apply:

29 1. Without taking possession of the person's out-of-state operator's license, the law
30 enforcement officer shall issue to the person a notification of the test results and a
31 temporary operator's permit extending nonresident operating privileges in this state

1 for twenty-five days from the date of issuance or until earlier terminated by the
2 decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05.
3 The temporary permit must be signed and dated by the officer and serves as the
4 director's official notification to the person of the director's intent to revoke,
5 suspend, or deny driving privileges in this state, and of the hearing procedures
6 under this chapter.

7 2. If the test was administered by saliva or urine sample or by drawing blood, the law
8 enforcement officer, on reviewing the alcohol concentration analysis showing the
9 person had an alcohol concentration of at least eight one-hundredths of one
10 percent by weight or, with respect to a person under twenty-one years of age, an
11 alcohol concentration of at least two one-hundredths of one percent by weight,
12 shall mail or issue to the person a notification of the test results, a temporary
13 operator's permit extending nonresident operating privileges in this state for
14 twenty-five days from the date of mailing or issuance or until earlier terminated by
15 the decision of ~~a hearing officer~~ an administrative law judge under section
16 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in
17 this state, together with the notice provided under section 39-06.1-07 of the
18 procedures available under this chapter. The temporary operator's permit must be
19 signed and dated by the officer.

20 3. The law enforcement officer, within five days of issuing the temporary operator's
21 permit, shall forward to the director a certified written report in the form required by
22 the director and a certified copy of the operational checklist and test records of a
23 breath test and a copy of the certified copy of the analytical report for a blood,
24 saliva, or urine test for all tests administered at the direction of the officer. If the
25 person was issued a temporary operator's permit because of the person's refusal
26 to submit to a test under sections 39-20-01 and 39-20-14, the report must include
27 information as provided in section 39-20-04. If the person was issued a temporary
28 operator's permit because of the results of a test, the report must show that the
29 officer had reasonable grounds to believe the person had been driving or was in
30 actual physical control of a motor vehicle while in violation of section 39-08-01, or
31 equivalent ordinance, that the person was lawfully arrested, that the person was

1 tested for alcohol concentration under this chapter, and that the results of the test
2 show that the person had an alcohol concentration of at least eight one-hundredths
3 of one percent by weight or, with respect to a person under twenty-one years of
4 age, an alcohol concentration of at least two one-hundredths of one percent by
5 weight.

6 **SECTION 13. AMENDMENT.** Subsection 1 of section 39-20-04 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none
9 may be given, but the law enforcement officer shall immediately take possession of
10 the person's operator's license if it is then available and shall immediately issue to
11 that person a temporary operator's permit, if the person then has valid operating
12 privileges, extending driving privileges for the next twenty-five days or until earlier
13 terminated by a decision of ~~a hearing officer~~ an administrative law judge under
14 section 39-20-05. The law enforcement officer shall sign and note the date on the
15 temporary operator's permit. The temporary operator's permit serves as the
16 director's official notification to the person of the director's intent to revoke driving
17 privileges in this state and of the hearing procedures under this chapter. The
18 director, upon the receipt of that person's operator's license and a certified written
19 report of the law enforcement officer in the form required by the director, forwarded
20 by the officer within five days after issuing the temporary operator's permit,
21 showing that the officer had reasonable grounds to believe the person had been
22 driving or was in actual physical control of a motor vehicle while in violation of
23 section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had
24 reason to believe that the person committed a moving traffic violation or was
25 involved in a traffic accident as a driver, and in conjunction with the violation or
26 accident the officer has, through the officer's observations, formulated an opinion
27 that the person's body contains alcohol, that the person was lawfully arrested if
28 applicable, and that the person had refused to submit to the test or tests under
29 section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive
30 and any nonresident operating privilege for the appropriate period under this
31 section, or if the person is a resident without a license or a permit to operate a

1 motor vehicle in this state, the director shall deny to the person the issuance of a
2 license or permit for the appropriate period under this section after the date of the
3 alleged violation, subject to the opportunity for a prerevocation hearing and
4 postrevocation review as provided in this chapter. In the revocation of the person's
5 operator's license the director shall give credit for time in which the person was
6 without an operator's license after the day of the person's refusal to submit to the
7 test except that the director may not give credit for time in which the person
8 retained driving privileges through a temporary operator's permit issued under this
9 section or section 39-20-03.2. The period of revocation or denial of issuance of a
10 license or permit under this section is:

- 11 a. One year if the person's driving record shows that within the five years
12 preceding the most recent violation of this section, the person's operator's
13 license has not previously been suspended, revoked, or issuance denied for a
14 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 15 b. Three years if the person's driving record shows that within the five years
16 preceding the most recent violation of this section, the person's operator's
17 license has been once previously suspended, revoked, or issuance denied for
18 a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 19 c. Four years if the person's driving record shows that within the five years
20 preceding the most recent violation of this section, the person's operator's
21 license has at least twice previously been suspended, revoked, or issuance
22 denied under this chapter, or for a violation of section 39-08-01 or equivalent
23 ordinance, or any combination of the same, and the suspensions,
24 revocations, or denials resulted from at least two separate arrests.

25 **SECTION 14. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **39-20-05. Administrative hearing on request.**

- 28 1. Before issuing an order of suspension, revocation, or denial under section
29 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a
30 hearing if the person mails or communicates by other means authorized by the
31 director a request for the hearing to the director within ten days after the date of

1 issuance of the temporary operator's permit. The hearing must be held within thirty
2 days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing
3 is not requested within the time limits in this section, and ~~no~~ an affidavit is not
4 submitted within the time limits under subsection 2 of section 39-20-04, the
5 expiration of the temporary operator's permit serves as the director's official
6 notification to the person of the revocation, suspension, or denial of driving
7 privileges in this state.

8 2. If the issue to be determined by the hearing concerns license suspension for
9 operating a motor vehicle while having an alcohol concentration of at least eight
10 one-hundredths of one percent by weight or, with respect to a person under
11 twenty-one years of age, an alcohol concentration of at least two one-hundredths
12 of one percent by weight, the hearing must be before ~~a hearing officer assigned by~~
13 ~~the director~~ an administrative law judge and at a time and place designated by the
14 director of the office of administrative hearings. The hearing must be recorded and
15 its scope may cover only the issues of whether the arresting officer had reasonable
16 grounds to believe the person had been driving or was in actual physical control of
17 a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to
18 a person under twenty-one years of age, the person had been driving or was in
19 actual physical control of a vehicle while having an alcohol concentration of at least
20 two one-hundredths of one percent by weight; whether the person was placed
21 under arrest, unless the person was under twenty-one years of age and the
22 alcohol concentration was less than eight one-hundredths of one percent by
23 weight, then arrest is not required and is not an issue under any provision of this
24 chapter; whether the person was tested in accordance with section 39-20-01 or
25 39-20-03 and, if applicable, section 39-20-02; and whether the test results show
26 the person had an alcohol concentration of at least eight one-hundredths of one
27 percent by weight or, with respect to a person under twenty-one years of age, an
28 alcohol concentration of at least two one-hundredths of one percent by weight. For
29 purposes of this section, a copy of a certified copy of an analytical report of a
30 blood, urine, or saliva sample from the director of the state crime laboratory or the
31 director's designee or a certified copy of the checklist and test records from a

1 certified breath test operator establish prima facie the alcohol concentration shown
2 therein. Whether the person was informed that the privilege to drive might be
3 suspended based on the results of the test is not an issue.

4 3. If the issue to be determined by the hearing concerns license revocation for
5 refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must
6 be before ~~a hearing officer assigned by the director~~ an administrative law judge at
7 a time and place designated by the director of the office of administrative hearings.
8 The hearing must be recorded. The scope of a hearing for refusing to submit to a
9 test under section 39-20-01 may cover only the issues of whether a law
10 enforcement officer had reasonable grounds to believe the person had been
11 driving or was in actual physical control of a vehicle in violation of section 39-08-01
12 or equivalent ordinance or, with respect to a person under twenty-one years of
13 age, the person had been driving or was in actual physical control of a vehicle
14 while having an alcohol concentration of at least two one-hundredths of one
15 percent by weight; whether the person was placed under arrest; and whether that
16 person refused to submit to the test or tests. The scope of a hearing for refusing to
17 submit to a test under section 39-20-14 may cover only the issues of whether the
18 law enforcement officer had reason to believe the person committed a moving
19 traffic violation or was involved in a traffic accident as a driver, whether in
20 conjunction with the violation or the accident the officer has, through the officer's
21 observations, formulated an opinion that the person's body contains alcohol and,
22 whether the person refused to submit to the onsite screening test. Whether the
23 person was informed that the privilege to drive would be revoked or denied for
24 refusal to submit to the test or tests is not an issue.

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

- 1 breath test operator, and any copy of a certified copy of a certificate of the director
2 of the state crime laboratory or the director's designee relating to approved
3 methods, devices, operators, materials, and checklists used for testing for alcohol
4 concentration received by the director from the director of the state crime
5 laboratory, the director's designee, or the recorder, unless the board of county
6 commissioners has designated a different official to maintain the certificate.
- 7 5. At a hearing under this section, the administrative law judge may introduce
8 records, conduct examinations, and present evidence relating to the issues to be
9 determined at the hearing. The department may be represented by legal counsel
10 at any hearing under this section.
- 11 6. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify
12 the person of the ~~hearing officer's~~ administrative law judge's findings of fact,
13 conclusions of law, and decision based on the findings and conclusions and shall
14 immediately deliver to the person a copy of the decision. If the ~~hearing officer~~
15 administrative law judge does not find in favor of the person, the copy of the
16 decision serves as the director's official notification to the person of the revocation,
17 suspension, or denial of driving privileges in this state. If the ~~hearing officer~~
18 administrative law judge finds, based on a preponderance of the evidence, that the
19 person refused a test under section 39-20-01 or 39-20-14 or that the person had
20 an alcohol concentration of at least eight one-hundredths of one percent by weight
21 or, with respect to a person under twenty-one years of age, an alcohol
22 concentration of at least two one-hundredths of one percent by weight, the ~~hearing~~
23 ~~officer shall~~ administrative law judge immediately shall take possession of the
24 person's temporary operator's permit issued under this chapter. If the ~~hearing~~
25 ~~officer~~ administrative law judge does not find against the person, the ~~hearing~~
26 ~~officer~~ administrative law judge shall sign, date, and mark on the person's permit
27 an extension of driving privileges for the next twenty days and shall return the
28 permit to the person. The ~~hearing officer~~ administrative law judge shall report the
29 findings, conclusions, and decisions to the director within ten days of the
30 conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has
31 determined in favor of the person, the director shall return the person's operator's

1 license by regular mail to the address on file with the director under section
2 39-06-20.
3 ~~6-~~ 7. If the person who requested a hearing under this section fails to appear at the
4 hearing without justification, the right to the hearing is waived, and the ~~hearing~~
5 ~~officer's~~ administrative law judge's determination on license revocation,
6 suspension, or denial will be based on the written request for hearing, law
7 enforcement officer's report, and other evidence as may be available. The ~~hearing~~
8 ~~officer shall~~ administrative law judge, on the date for which the hearing is
9 scheduled, shall mail to the person, by regular mail, at the address on file with the
10 director under section 39-06-20, or at any other address for the person or the
11 person's legal representative supplied in the request for hearing, a copy of the
12 decision which serves as the director's official notification to the person of the
13 revocation, suspension, or denial of driving privileges in this state. Even if the
14 person for whom the hearing is scheduled fails to appear at the hearing, the
15 hearing is deemed to have been held on the date for which it is scheduled for
16 purposes of appeal under section 39-20-06.

17 **SECTION 15. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-06. Judicial review.** Any ~~person whose operator's license or privilege has been~~
20 ~~suspended, revoked, or denied~~ party adversely affected by the decision of the ~~hearing officer~~
21 administrative law judge under section 39-20-05 may appeal within seven days after the date of
22 the hearing under section 39-20-05 as shown by the date of the ~~hearing officer's~~ administrative
23 law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a
24 notice of appeal and specifications of error in the district court in the county where the events
25 occurred for which the demand for a test was made, or in the county in which the administrative
26 hearing was held. The court shall set the matter for hearing, and the petitioner shall give
27 twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the~~
28 ~~decision. Neither the director nor the~~. The court may not stay the decision pending decision on
29 appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing~~
30 ~~officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal
31 is taken a certified transcript of the testimony and all other proceedings. It is the record on

1 which the appeal must be determined. ~~No~~ The court may not hear additional evidence ~~may be~~
2 ~~heard~~. The court shall affirm the decision of the ~~director or hearing officer~~ administrative law
3 judge unless ~~it~~ the court finds the evidence insufficient to warrant the conclusion reached by the
4 ~~director or hearing officer~~ administrative law judge. The court may direct that the matter be
5 returned to the ~~director or hearing officer~~ administrative law judge for rehearing and the
6 presentation of additional evidence.

7 **SECTION 16. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota
8 Century Code is amended and reenacted as follows:

9 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or
10 other persons to preside in an administrative proceeding, all adjudicative
11 proceedings of administrative agencies under chapter 28-32, except those of the
12 public service commission, the industrial commission, the insurance commissioner,
13 workforce safety and insurance, the state engineer, ~~the department of~~
14 ~~transportation~~, job service North Dakota, and the labor commissioner, must be
15 conducted by the office of administrative hearings in accordance with the
16 adjudicative proceedings provisions of chapter 28-32 and any rules adopted
17 pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section
18 61-03-22 and drainage appeals from water resource boards to the state engineer
19 pursuant to chapter 61-32 must be conducted by the office of administrative
20 hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and
21 rehabilitation for the parole board in accordance with chapter 12-59; regarding
22 parole violations; job discipline and dismissal appeals to the board of higher
23 education; Individuals With Disabilities Education Act and section 504 due process
24 hearings of the superintendent of public instruction; and chapter 37-19.1 veterans'
25 preferences hearings for any agency must be conducted by the office of
26 administrative hearings in accordance with applicable laws.

27 **SECTION 17. TRANSITION.** The office of administrative hearings shall consider first
28 hiring as employees all full-time department of transportation hearing officer employees who
29 currently conduct hearings for the department of transportation.

30 **SECTION 18. EFFECTIVE DATE.** Sections 4 through 17 of this Act become effective
31 on August 1, 2008.