17.0892.02000

Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

Representative Maragos

FIRST ENGROSSMENT

ENGROSSED HOUSE BILL NO. 1328

A BILL for an Act to amend and reenact section 39-06-37, subsection 3 of section 39-20-03.1, subsection 2 of section 39-20-03.2, and section 39-20-05 of the North Dakota Century Code, relating to surrendering driver's license, mailing of temporary operator's permit, and venue of administrative hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-37 of the North Dakota Century Code is amended and reenacted as follows:

39-06-37. Surrender and return of license - Duration of multiple suspensions and revocations for separate violations.

1. ~~The director upon canceling or revoking an operator's license shall require that the license must be surrendered to and be retained by the director.~~

~~2.~~ A suspension, revocation, or cancellation ordered under this title must be deemed to have commenced when the order is delivered to the licensee at the address of record in the department under section 39-06-20. Constructive delivery under this section must be considered as occurring ~~forty-eight~~seventy-two hours after the order is mailed to the ~~person~~individual by regular mail.

~~3.~~2. Unless otherwise specifically provided in this title, ~~any~~a suspension, revocation, cancellation, or denial of licensing ordered under this title must be in addition to, and run consecutive to, any other or existing suspension, revocation, cancellation, or denial of licensing ordered for a separate violation.

SECTION 2. AMENDMENT. Subsection 3 of section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the

individual who submitted to the blood or urine test, whether or not the individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the individual to the law enforcement officer. The law enforcement officer shall confirm the individual's current mailing address by asking the individual. If the individual refuses or is unable to give the individual's current mailing address, the individual's address on record with the director is deemed to be the individual's current address. The temporary operator's permit serves as the director's official notification to the individual of the director's intent to revoke, suspend, or deny driving privileges in this state.

SECTION 3. AMENDMENT. Subsection 2 of section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

2. If the test was administered by urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the individual a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer. The third day after the mailing of the temporary operator's permit is considered the date of issuance. The law enforcement officer shall confirm the individual's current mailing address by asking the individual. If the individual refuses or is unable to give the individual's current mailing address, the individual's address on record with the director is deemed to be the individual's current address.

SECTION 4. AMENDMENT. Section 39-20-05 of the North Dakota Century Code is amended and reenacted as follows:

39-20-05. Administrative hearing on request - Election to participate in the twenty-four seven sobriety program.

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or 39-20-04.1, the director shall afford ~~that person~~the individual an opportunity for ~~a~~an in-person hearing ~~if the person mails~~to be held at a location within one hundred fifty miles [241.40 kilometers] of the incident, unless the individual consents to a different location or consents to a hearing by telephone. The individual shall mail or ~~communicates~~communicate by other means authorized by the director a request for the hearing to the director within ten days after the date of issuance of the temporary operator's permit. Upon completion of the hearing, an individual may elect to participate in the twenty-four seven sobriety program under chapter 54-12. The hearing must be held within thirty days after the date of issuance of the temporary operator's permit. If no hearing is requested within the time limits in this section, and no affidavit is submitted within the time limits under subsection 2 of section 39-20-04, and if the individual has not provided the director with written notice of election to participate in the twenty-four seven sobriety program under chapter 54-12, the expiration of the temporary operator's permit serves as the director's official notification to the ~~person~~individual of the revocation, suspension, or denial of driving privileges in this state.
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 an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and ~~place~~location designated by the director within one hundred fifty miles [241.40 kilometers] of the incident, unless the individual consents to a different location or consents to have the hearing by telephone. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the individual had been driving or was in actual physical control of a

vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one years of age, the individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the individual was placed under arrest, unless the individual was under twenty-one years of age and the alcohol concentration was less than eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood or urine sample from the director of the state crime laboratory or the director's designee, or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by a law enforcement officer or individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system or a certified copy of the checklist and test records from a certified breath test operator, and a copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees, establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a hearing officer assigned by the director at a time and ~~place~~location designated by the director, within one hundred fifty miles [241.40 kilometers] of the incident, unless the individual consents to a different location or consents to have the hearing by telephone. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the ~~person~~individual had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or

equivalent ordinance or, with respect to ~~a person~~an individual under twenty-one years of age, the ~~person~~individual had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the ~~person~~individual was placed under arrest; and whether ~~that person~~the individual refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the ~~person~~individual committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol and, whether the ~~person~~individual refused to submit to the onsite screening test.

4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory:

   a. ~~Any~~A copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or electronically posted by the director of the state crime laboratory or the director's designee on the crime laboratory information management system and certified by, and received from, a law enforcement officer or an individual who has authorized access to the crime laboratory management system through the criminal justice data information sharing system, or a certified copy of the checklist and test records received by the director from a certified breath test operator;

   b. ~~Any~~A copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory or the director's designee, or that have been electronically posted with

the state crime laboratory division of the attorney general at the attorney general website; and

c. ~~Any~~A copy of a certified copy of a certificate of the director of the state crime laboratory designating the director's designees.

5. At the close of the hearing, the hearing officer shall notify the ~~person~~individual of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver ~~to the person~~ a copy of the decision to the individual. If the hearing officer does not find in favor of the ~~person~~individual, the copy of the decision serves as the director's official notification to the ~~person~~individual of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, ~~that~~ the ~~person~~individual refused a test under section 39-20-01 or 39-20-14 or ~~that~~ the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to ~~a person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the ~~person's~~individual's temporary operator's permit issued under this chapter. If the hearing officer does not find against the ~~person~~individual, the hearing officer shall sign, date, and mark on the ~~person's~~individual's permit an extension of driving privileges for the next twenty days and shall return the permit to the ~~person~~individual. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the ~~person~~individual, the director shall return the ~~person's~~individual's operator's license by regular mail to the address on file with the director under section 39-06-20.

6. If the ~~person~~individual who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the hearing officer's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. The hearing officer shall, on the date for which the hearing is scheduled, mail to the ~~person~~individual, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the ~~person~~individual or the

1 ~~person's~~individual's legal representative supplied in the request for hearing, a copy of
2 the decision which serves as the director's official notification to the ~~person~~individual of
3 the revocation, suspension, or denial of driving privileges in this state. Even if the
4 ~~person~~individual for whom the hearing is scheduled fails to appear at the hearing, the
5 hearing is deemed to have been held on the date for which it is scheduled for
6 purposes of appeal under section 39-20-06.