

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1132
(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 2 of section 39-06-03, subsection 3 of section 39-06-19, subsection 1 of section 39-06.2-09, subsection 17 of section 39-06.2-10, section 39-20-03.1, subsection 2 of section 39-20-03.2, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to who may be licensed, distinguishing numbers on operator's licenses, content of commercial driver's licenses, disqualification and cancellation of commercial driver's licenses, action following test results of a resident operator, action following test result or refusal of a nonresident operator, and action following test results; and to repeal section 39-16-29 of the North Dakota Century Code, relating to seizure or return of an operator's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

2. To any person whose license has been suspended in this state or in any other state during such suspension, except as provided in section 39-06.1-03 or 39-06.1-11, nor to any person whose license has been revoked, except as provided in sections 39-06-35 ~~and~~, 39-06-36, and 39-06.1-11.

SECTION 2. AMENDMENT. Subsection 3 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

3. An applicant for renewal must present the application with fee for renewal of license to the director not before ten months before the expiration date of the operator's license. The director may require an examination of an applicant as upon an original application. After the initial application for a license in this state, the director may not require an applicant for renewal, replacement, or a substitute to provide a social security card ~~unless the applicant is changing the distinguishing number on the license to the applicant's social security number.~~ The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. The director may not renew an operator's license if the license has been suspended under section 14-08.1-07. Upon the recommendation of the court, the director may issue a temporary permit to the licensee under section 39-06.1-11 if the temporary permit is necessary for the licensee to work and the court has determined the licensee is making a good-faith effort to comply with the child support order.

SECTION 3. AMENDMENT. Subsection 1 of section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

1. Content of license. The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
 - a. The name and residential address of the person;
 - b. The person's color photograph;
 - c. A physical description of the person, including sex, height, ~~weight,~~ and eye ~~and hair~~ color;

- d. Date of birth;
- e. A distinguishing number assigned to the person ~~which upon request may be a number different from the person's social security number;~~
- f. The person's signature;
- g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
- h. The name of this state; and
- i. The dates between which the license is valid.

SECTION 4. AMENDMENT. Subsection 17 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

- 17. After suspending, revoking, disqualifying, or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

SECTION 5. AMENDMENT. Section 39-20-03.1 of the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

- 1. The law enforcement officer shall immediately ~~take possession of the person's operator's license if it is then available and shall immediately~~ issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
- 2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall ~~immediately take possession of the person's North Dakota operator's license or permit if it is then available and~~, within twenty-four hours, forward the ~~license and~~ a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall ~~also, on taking possession of the person's operator's license,~~ issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in

subsection 1. Alternatively, 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 person who submitted to the blood, urine, or saliva test. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Within three days after the person receives the temporary operator's permit, the person shall mail the person's North Dakota operator's license to the law enforcement agency that made the arrest. 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 person to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 6. 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 saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail or issue to the person 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.

SECTION 7. AMENDMENT. Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of ~~a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2,~~ and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test

within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's ~~operator's license~~ driving privileges as follows:

- a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, and under eighteen one-hundredths of one percent by weight.
- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
- c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
- d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, with the last violation or suspension for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

SECTION 8. REPEAL. Section 39-16-29 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1132.

House Vote: Yeas 91 Nays 0 Absent 3

Senate Vote: Yeas 46 Nays 0 Absent 1

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

Secretary of State