

SENATE BILL NO. 2196

Introduced by

Senators Hogue, Armstrong, Schneider, Triplett

Representative Klemin

1 A BILL for an Act to amend and reenact ~~section~~sections 39-20-01 and 39-20-14 of the North
2 Dakota Century Code, relating to implied consent and screening tests.

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

4 **SECTION 1. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

7 Any individual who operates a motor vehicle on a highway or on public or private areas to
8 which the public has a right of access for vehicular use in this state is deemed to have given
9 consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests,
10 of the blood, breath, or urine for the purpose of determining the alcohol concentration or
11 presence of other drugs, or combination thereof, in the individual's blood, breath, or urine. As
12 used in this chapter, the word "drug" means any drug or substance or combination of drugs or
13 substances which renders an individual incapable of safely driving, and the words "chemical
14 test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of
15 other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the
16 director of the state crime laboratory or the director's designee under this chapter. The test or
17 tests must be administered at the direction of a law enforcement officer only after placing the
18 individual, except individuals mentioned in section 39-20-03, under arrest and informing that
19 individual that the individual is or will be charged with the offense of driving or being in actual
20 physical control of a vehicle upon the public highways while under the influence of intoxicating
21 liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody
22 of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the
23 requirement of an arrest. The law enforcement officer shall also inform the individual charged
24 that refusal of the individual to submit to the test determined appropriate will result in a

1 revocation for at least one year and up to four years of the individual's driving privileges. In
2 addition, the law enforcement officer shall inform the individual charged that the individual will
3 not be able to receive a temporary restricted operator's license from this state if the individual
4 refuses to test. The law enforcement officer shall determine which of the tests is to be used.
5 When an individual under the age of eighteen years is taken into custody for violating section
6 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the
7 individual's parent or legal guardian to explain the cause for the custody. Neither the law
8 enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
9 may be permitted to interfere with the administration of chemical testing requirements under this
10 chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the
11 minor within ten days after the test results are received or within ten days after the minor is
12 taken into custody if the minor refuses to submit to testing. The notice must contain a statement
13 of the test performed and the results of that test; or if the minor refuses to submit to the testing,
14 a statement notifying of that fact. The attempt to contact or the contacting or notification of a
15 parent or legal guardian is not a precondition to the admissibility of chemical test results or the
16 finding of a consent to, or refusal of, chemical testing by the individual in custody.

17 **SECTION 2. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-14. Screening tests.**

20 Any individual who operates a motor vehicle upon the public highways of this state is
21 deemed to have given consent to submit to an onsite screening test or tests of the individual's
22 breath for the purpose of estimating the alcohol concentration in the individual's breath upon the
23 request of a law enforcement officer who has reason to believe that the individual committed a
24 moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with
25 the violation or the accident the officer has, through the officer's observations, formulated an
26 opinion that the individual's body contains alcohol. An individual may not be required to submit
27 to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in
28 immediate charge of the individual's case is not first notified of the proposal to make the
29 requirement, or objects to the test or tests on the ground that such would be prejudicial to the
30 proper care or treatment of the patient. The screening test or tests must be performed by an
31 enforcement officer certified as a chemical test operator by the director of the state crime

1 laboratory or the director's designee and according to methods and with devices approved by
2 the director of the state crime laboratory or the director's designee. The results of such
3 screening test must be used only for determining whether or not a further test shall be given
4 under the provisions of section 39-20-01. The officer shall inform the individual that refusal of
5 the individual to submit to a screening test will result in a revocation for at least one year and up
6 to four years of that individual's driving privileges. The officer shall inform the individual that
7 refusal of the screening test will result in the individual being ineligible for a North Dakota
8 temporary restricted operator's license. If such individual refuses to submit to such screening
9 test or tests, none may be given, but such refusal is sufficient cause to revoke such individual's
10 license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as
11 provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be
12 available. However, the director must not revoke an individual's driving privileges for refusing to
13 submit to a screening test requested under this section if the individual provides a sufficient
14 breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the
15 same incident. No provisions of this section may supersede any provisions of chapter 39-20,
16 nor may any provision of chapter 39-20 be construed to supersede this section except as
17 provided herein. For the purposes of this section, "chemical test operator" means an individual
18 certified by the director of the state crime laboratory or the director's designee as qualified to
19 perform analysis for alcohol in an individual's blood, breath, or urine.