

SENATE BILL NO. 2176

Introduced by

Senator Armstrong

1 A BILL for an Act to amend and reenact subdivision e of subsection 1 of section 39-08-01,
2 subsection 3 of section 39-08-01.2, section 39-20-03, and subsection 3 of section 39-20-14 of
3 the North Dakota Century Code, relating to driving under the influence.

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

5 **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 39-08-01 of the North
6 Dakota Century Code is amended and reenacted as follows:

7 e. That individual refuses to submit to any of the following:

8 (1) A chemical test, or tests, of the individual's blood, breath, or urine to
9 determine the alcohol concentration or presence of other drugs, or
10 combination thereof, in the individual's blood, breath, or urine, at the
11 direction of a law enforcement officer under section 39-06.2-10.2 if the
12 individual is driving or is in actual physical control of a commercial motor
13 vehicle; or

14 (2) A chemical test, or tests, of the individual's blood, breath, or urine to
15 determine the alcohol concentration or presence of other drugs, or
16 combination thereof, in the individual's blood, breath, or urine, at the
17 direction of a law enforcement officer under section 39-20-01; or

18 ~~(3) An onsite screening test, or tests, of the individual's breath for the purpose~~
19 ~~of estimating the alcohol concentration in the individual's breath upon the~~
20 ~~request of a law enforcement officer under section 39-20-14.~~

21 **SECTION 2. AMENDMENT.** Subsection 3 of section 39-08-01.2 of the North Dakota
22 Century Code is amended and reenacted as follows:

23 3. The sentence under this section may not be suspended unless the court finds that
24 manifest injustice would result from the imposition of the sentence. Before a sentence

1 under this section applies, a defendant must be notified of the minimum mandatory
2 sentence. The elements of an offense under this section are the elements of an
3 offense for a violation of section 39-08-01 and the additional elements that create an
4 offense in each subsection of this section. Whether an individual caused death or
5 substantial or serious bodily injury must be determined in accordance with section
6 12.1-02-05.

7 **SECTION 3. AMENDMENT.** Section 39-20-03 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-20-03. Consent of person incapable of refusal not withdrawn.**

10 ~~Any person~~An individual who is dead, unconscious, or otherwise in a condition rendering
11 the ~~person~~individual incapable of refusal, must be deemed not to have withdrawn the consent
12 provided by section 39-20-01 and the test or tests may be given unless the test is a blood test
13 for which a warrant first must be secured.

14 **SECTION 4. AMENDMENT.** Subsection 3 of section 39-20-14 of the North Dakota Century
15 Code is amended and reenacted as follows:

16 3. The screening test or tests must be performed by an enforcement officer certified as a
17 chemical test operator by the director of the state crime laboratory or the director's
18 designee and according to methods and with devices approved by the director of the
19 state crime laboratory or the director's designee. The results of such screening test
20 must be used only for determining whether or not a further test shall be given under
21 the provisions of section 39-20-01. The officer shall inform the individual that North
22 Dakota law requires the individual to take the screening test to determine whether the
23 individual is under the influence of alcohol, ~~that refusal to take the screening test is a~~
24 ~~crime,~~ and that refusal of the individual to submit to a screening test may result in a
25 revocation for at least one hundred eighty days and up to three years of that
26 individual's driving privileges. If such individual refuses to submit to such screening
27 test or tests, none may be given, but such refusal is admissible in a court proceeding if
28 the individual was arrested in violation of 39-08-01 and did not take any additional
29 chemical tests requested by the law enforcement officer. Such refusal is sufficient
30 cause to revoke such individual's license or permit to drive in the same manner as

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- 1 provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a
- 2 judicial review as provided in section 39-20-06 must be available.