

Sixty-fifth
Legislative Assembly
of North Dakota

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~~sections 39-20-03.1 and 39-20-03.2,
3 subsection 2 of section 39-20-05, and subsection 3 of section 39-20-14 of the North Dakota
4 Century Code, relating to driving under the influence; and to repeal section 39-20-03 of the
5 North Dakota Century Code, relating to driving under the influence.

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

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

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

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

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

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

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

1 3. The sentence under this section may not be suspended unless the court finds that
2 manifest injustice would result from the imposition of the sentence. Before a sentence
3 under this section applies, a defendant must be notified of the minimum mandatory
4 sentence. The elements of an offense under this section are the elements of an
5 offense for a violation of section 39-08-01 and the additional elements that create an
6 offense in each subsection of this section. Whether an individual caused death or
7 substantial or serious bodily injury must be determined in accordance with section
8 12.1-02-05.

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

11 ~~— **39-20-03. Consent of person incapable of refusal not withdrawn.**~~

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

16 **SECTION 3. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-20-03.1. Action following test result for a resident operator.**

19 If a person submits to a test under section 39-20-01, or 39-20-02, ~~or 39-20-03~~ and the test
20 shows that person to have an alcohol concentration of at least eight one-hundredths of one
21 percent by weight 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 at the time of the
23 performance of a chemical test within two hours after the driving or being in actual physical
24 control of a vehicle, the following procedures apply:

- 25 1. The law enforcement officer shall immediately issue to that person a temporary
26 operator's permit if the person then has valid operating privileges, extending driving
27 privileges for the next twenty-five days, or until earlier terminated by the decision of a
28 hearing officer under section 39-20-05. The law enforcement officer shall sign and
29 note the date on the temporary operator's permit. The temporary operator's permit
30 serves as the director's official notification to the person of the director's intent to
31 revoke, suspend, or deny driving privileges in this state.

- 1 | 2. If a test administered under section 39-20-01 ~~or 39-20-03~~ was by urine sample or by
2 | drawing blood as provided in section 39-20-02 and the individual tested is not a
3 | resident of an area in which the law enforcement officer has jurisdiction, the law
4 | enforcement officer shall, on receiving the analysis of the urine or blood from the
5 | director of the state crime laboratory or the director's designee and if the analysis
6 | shows that individual had an alcohol concentration of at least eight one-hundredths of
7 | one percent by weight or, with respect to an individual under twenty-one years of age,
8 | an alcohol concentration of at least two one-hundredths of one percent by weight,
9 | either proceed in accordance with subsection 1 during that individual's reappearance
10 | within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
11 | enforcement agency having jurisdiction where the individual lives. On that notification,
12 | that law enforcement agency shall, within twenty-four hours, forward a copy of the
13 | temporary operator's permit to the law enforcement agency making the arrest or to the
14 | director. The law enforcement agency shall issue to that individual a temporary
15 | operator's permit as provided in this section, and shall sign and date the permit as
16 | provided in subsection 1.
- 17 | 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
18 | enforcement agency making the arrest may mail a temporary operator's permit to the
19 | individual who submitted to the blood or urine test, whether or not the individual is a
20 | resident of the area in which the law enforcement officer has jurisdiction. The third day
21 | after the mailing of the temporary operator's permit is considered the date of issuance.
22 | Actual notice of the opportunity for a hearing under this section is deemed to have
23 | occurred seventy-two hours after the notice is mailed by regular mail to the address
24 | submitted by the individual to the law enforcement officer. The temporary operator's
25 | permit serves as the director's official notification to the individual of the director's
26 | intent to revoke, suspend, or deny driving privileges in this state.
- 27 | 4. The law enforcement officer, within five days of the issuance of the temporary
28 | operator's permit, shall forward to the director a certified written report in the form
29 | required by the director. If the individual was issued a temporary operator's permit
30 | because of the results of a test, the report must show that the officer had reasonable
31 | grounds to believe the individual had been driving or was in actual physical control of a

1 motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the
2 individual was lawfully arrested, that the individual was tested for alcohol concentration
3 under this chapter, and that the results of the test show that the individual had an
4 alcohol concentration of at least eight one-hundredths of one percent by weight or,
5 with respect to an individual under twenty-one years of age, an alcohol concentration
6 of at least two one-hundredths of one percent by weight. In addition to the operator's
7 license and report, the law enforcement officer shall forward to the director a certified
8 copy of the operational checklist and test records of a breath test and a copy of the
9 certified copy of the analytical report for a blood or urine test for all tests administered
10 at the direction of the officer.

- 11 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
12 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
13 lieu of the administrative hearing under this chapter if the individual's driver's license is
14 not subject to an unrelated suspension or revocation. Notwithstanding any other
15 provision of law, an individual may not receive a temporary restricted operator's
16 license until after fourteen days after the administrative hearing on the offense under
17 this chapter has been waived or held, or after fourteen days of the final appeal,
18 whichever is longer. The director shall issue a temporary restricted driver's license with
19 the restriction the individual participate in the twenty-four seven sobriety program upon
20 application by the individual with submission of proof of financial responsibility and
21 proof of participation in the twenty-four seven sobriety program under chapter 54-12.

22 **SECTION 4. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **39-20-03.2. Action following test result or on refusing test by nonresident operator.**

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

- 1 1. Without taking possession of the person's out-of-state operator's license, the law
2 enforcement officer shall issue to the person a notification of the test results and a
3 temporary operator's permit extending nonresident operating privileges in this state for
4 twenty-five days from the date of issuance or until earlier terminated by the decision of
5 a hearing officer under section 39-20-05. The temporary permit must be signed and
6 dated by the officer and serves as the director's official notification to the person of the
7 director's intent to revoke, suspend, or deny driving privileges in this state, and of the
8 hearing procedures under this chapter.
- 9 2. If the test was administered by urine sample or by drawing blood, the law enforcement
10 officer, on reviewing the alcohol concentration analysis showing the individual had an
11 alcohol concentration of at least eight one-hundredths of one percent by weight or,
12 with respect to an individual under twenty-one years of age, an alcohol concentration
13 of at least two one-hundredths of one percent by weight, shall mail or issue to the
14 individual a notification of the test results, a temporary operator's permit extending
15 nonresident operating privileges in this state for twenty-five days from the date of
16 mailing or issuance or until earlier terminated by the decision of a hearing officer under
17 section 39-20-05, and notice of the intent to revoke, suspend, or deny driving
18 privileges in this state, together with the notice provided under section 39-06.1-07 of
19 the procedures available under this chapter. The temporary operator's permit must be
20 signed and dated by the officer. The third day after the mailing of the temporary
21 operator's permit is considered the date of issuance.
- 22 3. The law enforcement officer, within five days of issuing the temporary operator's
23 permit, shall forward to the director a certified written report in the form required by the
24 director and a certified copy of the operational checklist and test records of a breath
25 test and a copy of the certified copy of the analytical report for a blood or urine test for
26 all tests administered at the direction of the officer. If the individual was issued a
27 temporary operator's permit because of the individual's refusal to submit to a test
28 under sections 39-20-01 and 39-20-14, the report must include information as
29 provided in section 39-20-04. If the individual was issued a temporary operator's
30 permit because of the results of a test, the report must show that the officer had
31 reasonable grounds to believe the individual had been driving or was in actual physical

1 control of a motor vehicle while in violation of section 39-08-01, or equivalent
2 ordinance, that the individual was lawfully arrested, that the individual was tested for
3 alcohol concentration under this chapter, and that the results of the test show that the
4 individual had an alcohol concentration of at least eight one-hundredths of one percent
5 by weight or, with respect to an individual under twenty-one years of age, an alcohol
6 concentration of at least two one-hundredths of one percent by weight.

7 **SECTION 5. AMENDMENT.** Subsection 2 of section 39-20-05 of the North Dakota Century
8 Code is amended and reenacted as follows:

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

SECTION 6. AMENDMENT. Subsection 3 of section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

3. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The law enforcement officer shall inform the individual charged that North Dakota law requires the individual to take a test to determine whether the individual is under the influence of alcohol or drugs and that refusal of the individual to submit to any test directed by the law enforcement officer may result in a revocation for a minimum of one hundred eighty days and up to three years of the individual's driving privileges. The individual also must be informed refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant. The officer shall inform the individual that North Dakota law requires the individual to take the screening test to determine whether the individual is under the influence of alcohol, ~~that refusal to take the screening test is a crime, and that refusal of the individual to submit to a screening test may result in a revocation for at least one hundred eighty days and up to three years of that individual's driving privileges.~~ If such individual refuses to submit to such screening test or tests, none may be given, but such refusal is admissible in a court proceeding if the individual was arrested in violation of 39-08-01 and did not take any additional chemical tests

1 requested by the law enforcement officer. Such refusal is sufficient cause to revoke
2 such individual's license or permit to drive in the same manner as provided in section
3 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as
4 provided in section 39-20-06 must be available.

5 **SECTION 7. REPEAL.** Section 39-20-03 of the North Dakota Century Code is repealed.