

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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 7 of section 39-08-01, subsection 3 of section 39-08-01.2, subdivision a of  
3 subsection 3 of section 39-20-01, sections 39-20-03.1 and 39-20-03.2, subsection 2 of section  
4 39-20-05, and subsection 3 of section 39-20-14 of the North Dakota Century Code, relating to  
5 driving under the influence; ~~and~~ to repeal section 39-20-03 of the North Dakota Century Code,  
6 relating to driving under the influence; and to provide a penalty.

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

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

- 10 e. That individual refuses to submit to any of the following:
- 11 (1) A chemical test, or tests, of the individual's blood, breath, or urine to  
12 determine the alcohol concentration or presence of other drugs, or  
13 combination thereof, in the individual's blood, breath, or urine, at the  
14 direction of a law enforcement officer under section 39-06.2-10.2 if the  
15 individual is driving or is in actual physical control of a commercial motor  
16 vehicle; or
- 17 (2) A chemical test, or tests, of the individual's blood, breath, or urine to  
18 determine the alcohol concentration or presence of other drugs, or  
19 combination thereof, in the individual's blood, breath, or urine, at the  
20 direction of a law enforcement officer under section 39-20-01; ~~or~~
- 21 (3) ~~An onsite screening test, or tests, of the individual's breath for the purpose~~  
22 ~~of estimating the alcohol concentration in the individual's breath upon the~~  
23 ~~request of a law enforcement officer under section 39-20-14.~~

1       **SECTION 2. AMENDMENT.** Subsection 7 of section 39-08-01 of the North Dakota Century  
2 Code is amended and reenacted as follows:

- 3           7. As used in this title, participation in the twenty-four seven sobriety program under  
4 chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and  
5 requires sobriety breath testing twice per day seven days per week or electronic  
6 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for  
7 all twenty-four seven sobriety program fees and the court may not waive the fees. For  
8 purposes of this section, the twenty-four seven sobriety program is a condition of  
9 probation and a court may not order participation in the program as part of the  
10 sentence. If an individual ordered to participate in the twenty-four seven program is not  
11 a resident of this state, that individual shall enroll in a twenty-four seven program or an  
12 alcohol compliance program if available in that individual's state of residence and shall  
13 file proof of such enrollment.

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

- 16           3. The sentence under this section may not be suspended unless the court finds that  
17 manifest injustice would result from the imposition of the sentence. Before a sentence  
18 under this section applies, a defendant must be notified of the minimum mandatory  
19 sentence. The elements of an offense under this section are the elements of an  
20 offense for a violation of section 39-08-01 and the additional elements that create an  
21 offense in each subsection of this section. Whether an individual caused death or  
22 substantial or serious bodily injury must be determined in accordance with section  
23 12.1-02-05.

24       **SECTION 4. AMENDMENT.** Subdivision a of subsection 3 of section 39-20-01 of the North  
25 Dakota Century Code is amended and reenacted as follows:

- 26           a. The law enforcement officer shall inform the individual charged that North Dakota  
27 law requires the individual to take ~~the~~ a chemical test to determine whether the  
28 individual is under the influence of alcohol or drugs; ~~that refusal to take the~~ and  
29 that refusal of the individual to submit to a test directed by the law enforcement  
30 officer ~~is a crime punishable in the same manner as driving under the influence;~~  
31 ~~and that refusal of the individual to submit to the test directed by the law~~

1 ~~enforcement officer may result in a revocation for a minimum of one hundred~~  
2 ~~eighty days and up to three years of the individual's driving privileges~~ may result  
3 in a revocation of the individual's driving privileges for a minimum of one hundred  
4 eighty days and up to three years. In addition, the law enforcement officer shall  
5 inform the individual refusal to take a breath or urine test is a crime punishable in  
6 the same manner as driving under the influence. If the officer requests the  
7 individual to submit to a blood test, the officer may not inform the individual of any  
8 criminal penalties until the officer has first secured a search warrant.

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

11 **39-20-03.1. Action following test result for a resident operator.**

12 If a person submits to a test under section 39-20-01; or 39-20-02; ~~or 39-20-03~~ and the test  
13 shows that person to have an alcohol concentration of at least eight one-hundredths of one  
14 percent by weight or, with respect to a person under twenty-one years of age, an alcohol  
15 concentration of at least two one-hundredths of one percent by weight at the time of the  
16 performance of a chemical test within two hours after the driving or being in actual physical  
17 control of a vehicle, the following procedures apply:

- 18 1. The law enforcement officer shall immediately issue to that person a temporary  
19 operator's permit if the person then has valid operating privileges, extending driving  
20 privileges for the next twenty-five days, or until earlier terminated by the decision of a  
21 hearing officer under section 39-20-05. The law enforcement officer shall sign and  
22 note the date on the temporary operator's permit. The temporary operator's permit  
23 serves as the director's official notification to the person of the director's intent to  
24 revoke, suspend, or deny driving privileges in this state.
- 25 2. If a test administered under section 39-20-01 ~~or 39-20-03~~ was by urine sample or by  
26 drawing blood as provided in section 39-20-02 and the individual tested is not a  
27 resident of an area in which the law enforcement officer has jurisdiction, the law  
28 enforcement officer shall, on receiving the analysis of the urine or blood from the  
29 director of the state crime laboratory or the director's designee and if the analysis  
30 shows that individual had an alcohol concentration of at least eight one-hundredths of  
31 one percent by weight or, with respect to an individual under twenty-one years of age,

1 an alcohol concentration of at least two one-hundredths of one percent by weight,  
2 either proceed in accordance with subsection 1 during that individual's reappearance  
3 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law  
4 enforcement agency having jurisdiction where the individual lives. On that notification,  
5 that law enforcement agency shall, within twenty-four hours, forward a copy of the  
6 temporary operator's permit to the law enforcement agency making the arrest or to the  
7 director. The law enforcement agency shall issue to that individual a temporary  
8 operator's permit as provided in this section, and shall sign and date the permit as  
9 provided in subsection 1.

10 3. If the test results indicate an alcohol concentration at or above the legal limit, the law  
11 enforcement agency making the arrest may mail a temporary operator's permit to the  
12 individual who submitted to the blood or urine test, whether or not the individual is a  
13 resident of the area in which the law enforcement officer has jurisdiction. The third day  
14 after the mailing of the temporary operator's permit is considered the date of issuance.  
15 Actual notice of the opportunity for a hearing under this section is deemed to have  
16 occurred seventy-two hours after the notice is mailed by regular mail to the address  
17 submitted by the individual to the law enforcement officer. The temporary operator's  
18 permit serves as the director's official notification to the individual of the director's  
19 intent to revoke, suspend, or deny driving privileges in this state.

20 4. The law enforcement officer, within five days of the issuance of the temporary  
21 operator's permit, shall forward to the director a certified written report in the form  
22 required by the director. If the individual was issued a temporary operator's permit  
23 because of the results of a test, the report must show that the officer had reasonable  
24 grounds to believe the individual had been driving or was in actual physical control of a  
25 motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the  
26 individual was lawfully arrested, that the individual was tested for alcohol concentration  
27 under this chapter, and that the results of the test show that the individual had an  
28 alcohol concentration of at least eight one-hundredths of one percent by weight or,  
29 with respect to an individual under twenty-one years of age, an alcohol concentration  
30 of at least two one-hundredths of one percent by weight. In addition to the operator's  
31 license and report, the law enforcement officer shall forward to the director a certified

1 copy of the operational checklist and test records of a breath test and a copy of the  
2 certified copy of the analytical report for a blood or urine test for all tests administered  
3 at the direction of the officer.

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

15 **SECTION 6. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **39-20-03.2. Action following test result or on refusing test by nonresident operator.**

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

25 1. Without taking possession of the person's out-of-state operator's license, the law  
26 enforcement officer shall issue to the person a notification of the test results and a  
27 temporary operator's permit extending nonresident operating privileges in this state for  
28 twenty-five days from the date of issuance or until earlier terminated by the decision of  
29 a hearing officer under section 39-20-05. The temporary permit must be signed and  
30 dated by the officer and serves as the director's official notification to the person of the

1 director's intent to revoke, suspend, or deny driving privileges in this state, and of the  
2 hearing procedures under this chapter.

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

16 3. The law enforcement officer, within five days of issuing the temporary operator's  
17 permit, shall forward to the director a certified written report in the form required by the  
18 director and a certified copy of the operational checklist and test records of a breath  
19 test and a copy of the certified copy of the analytical report for a blood or urine test for  
20 all tests administered at the direction of the officer. If the individual was issued a  
21 temporary operator's permit because of the individual's refusal to submit to a test  
22 under sections 39-20-01 and 39-20-14, the report must include information as  
23 provided in section 39-20-04. If the individual was issued a temporary operator's  
24 permit because of the results of a test, the report must show that the officer had  
25 reasonable grounds to believe the individual had been driving or was in actual physical  
26 control of a motor vehicle while in violation of section 39-08-01, or equivalent  
27 ordinance, that the individual was lawfully arrested, that the individual was tested for  
28 alcohol concentration under this chapter, and that the results of the test show that the  
29 individual had an alcohol concentration of at least eight one-hundredths of one percent  
30 by weight or, with respect to an individual under twenty-one years of age, an alcohol  
31 concentration of at least two one-hundredths of one percent by weight.

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

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

1 director's designees, establish prima facie the alcohol concentration or the presence of  
2 drugs, or a combination thereof, shown therein.

3 **SECTION 8. AMENDMENT.** Subsection 3 of section 39-20-14 of the North Dakota Century  
4 Code is amended and reenacted as follows:

5 3. The screening test or tests must be performed by an enforcement officer certified as a  
6 chemical test operator by the director of the state crime laboratory or the director's  
7 designee and according to methods and with devices approved by the director of the  
8 state crime laboratory or the director's designee. The results of such screening test  
9 must be used only for determining whether or not a further test shall be given under  
10 the provisions of section 39-20-01. ~~The law enforcement officer shall inform the~~  
11 ~~individual charged that North Dakota law requires the individual to take a test to~~  
12 ~~determine whether the individual is under the influence of alcohol or drugs and that~~  
13 ~~refusal of the individual to submit to any test directed by the law enforcement officer~~  
14 ~~may result in a revocation for a minimum of one hundred eighty days and up to three~~  
15 ~~years of the individual's driving privileges. The individual also must be informed refusal~~  
16 ~~to take a breath or urine test is a crime punishable in the same manner as driving~~  
17 ~~under the influence. If the officer requests the individual to submit to a blood test, the~~  
18 ~~officer may not inform the individual of any criminal penalties until the officer has first~~  
19 ~~secured a search warrant.~~ The officer shall inform the individual that North Dakota law  
20 requires the individual to take the screening test to determine whether the individual is  
21 under the influence of alcohol, that refusal to take the screening test is a crime, and  
22 that refusal of the individual to submit to a screening test may result in a revocation for  
23 at least one hundred eighty days and up to three years of that individual's driving  
24 privileges. If such individual refuses to submit to such screening test or tests, none  
25 may be given, but such refusal is admissible in a court proceeding if the individual was  
26 arrested in violation of 39-08-01 and did not take any additional chemical tests  
27 requested by the law enforcement officer. Such refusal is sufficient cause to revoke  
28 such individual's license or permit to drive in the same manner as provided in section  
29 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as  
30 provided in section 39-20-06 must be available.

31 **SECTION 9. REPEAL.** Section 39-20-03 of the North Dakota Century Code is repealed.