

HOUSE BILL NO. 1328

Introduced by

Representative Maragos

1 A BILL for an Act to amend and reenact section 39-06-37, subsection 3 of section 39-20-03.1,
2 subsection 2 of section 39-20-03.2, and section 39-20-05 of the North Dakota Century Code,
3 relating to surrendering driver's license, mailing of temporary operator's permit, and venue of
4 administrative hearings.

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

6 **SECTION 1. AMENDMENT.** Section 39-06-37 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-06-37. Surrender and return of license - Duration of multiple suspensions and**
9 **revocations for separate violations.**

- 10 1. The director upon canceling or revoking an operator's license shall require that the
11 license must be surrendered to and be retained by the director.
- 12 2. A suspension, revocation, or cancellation ordered under this title must be deemed to
13 have commenced when the order is delivered to the licensee at the address of record
14 in the department under section 39-06-20. Constructive delivery under this section
15 must be considered as occurring ~~forty-eight~~seventy-two hours after the order is mailed
16 to the ~~person~~individual by regular mail.
- 17 3. Unless otherwise specifically provided in this title, ~~any~~a suspension, revocation,
18 cancellation, or denial of licensing ordered under this title must be in addition to, and
19 run consecutive to, any other or existing suspension, revocation, cancellation, or
20 denial of licensing ordered for a separate violation.

21 **SECTION 2. AMENDMENT.** Subsection 3 of section 39-20-03.1 of the North Dakota
22 Century Code is amended and reenacted as follows:

- 23 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
24 enforcement agency making the arrest may mail a temporary operator's permit to the

1 individual who submitted to the blood or urine test, whether or not the individual is a
2 resident of the area in which the law enforcement officer has jurisdiction. The third day
3 after the mailing of the temporary operator's permit is considered the date of issuance.
4 Actual notice of the opportunity for a hearing under this section is deemed to have
5 occurred seventy-two hours after the notice is mailed by regular mail to the address
6 submitted by the individual to the law enforcement officer. The law enforcement officer
7 shall confirm the individual's current mailing address by asking the individual. If the
8 individual refuses or is unable to give the individual's current mailing address, the
9 individual's address on record with the director is deemed to be the individual's current
10 address. The temporary operator's permit serves as the director's official notification to
11 the individual of the director's intent to revoke, suspend, or deny driving privileges in
12 this state.

13 **SECTION 3. AMENDMENT.** Subsection 2 of section 39-20-03.2 of the North Dakota
14 Century Code is amended and reenacted as follows:

- 15 2. If the test was administered by urine sample or by drawing blood, the law enforcement
16 officer, on reviewing the alcohol concentration analysis showing the individual had an
17 alcohol concentration of at least eight one-hundredths of one percent by weight or,
18 with respect to an individual under twenty-one years of age, an alcohol concentration
19 of at least two one-hundredths of one percent by weight, shall mail or issue to the
20 individual a notification of the test results, a temporary operator's permit extending
21 nonresident operating privileges in this state for twenty-five days from the date of
22 mailing or issuance or until earlier terminated by the decision of a hearing officer under
23 section 39-20-05, and notice of the intent to revoke, suspend, or deny driving
24 privileges in this state, together with the notice provided under section 39-06.1-07 of
25 the procedures available under this chapter. The temporary operator's permit must be
26 signed and dated by the officer. The third day after the mailing of the temporary
27 operator's permit is considered the date of issuance. The law enforcement officer shall
28 confirm the individual's current mailing address by asking the individual. If the
29 individual refuses or is unable to give the individual's current mailing address, the
30 individual's address on record with the director is deemed to be the individual's current
31 address.

1 **SECTION 4. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **39-20-05. Administrative hearing on request - Election to participate in the**
4 **twenty-four seven sobriety program.**

- 5 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
6 39-20-04.1, the director shall afford ~~that person~~the individual an opportunity for ~~an~~
7 in-person hearing ~~if the person mails in the county in which the incident occurred~~
8 unless the individual consents to a different county or consents to a hearing by
9 telephone. The individual shall mail or ~~communicates~~communicate by other means
10 authorized by the director a request for the hearing to the director within ten days after
11 the date of issuance of the temporary operator's permit. Upon completion of the
12 hearing, an individual may elect to participate in the twenty-four seven sobriety
13 program under chapter 54-12. The hearing must be held within thirty days after the
14 date of issuance of the temporary operator's permit. If no hearing is requested within
15 the time limits in this section, and no affidavit is submitted within the time limits under
16 subsection 2 of section 39-20-04, and if the individual has not provided the director
17 with written notice of election to participate in the twenty-four seven sobriety program
18 under chapter 54-12, the expiration of the temporary operator's permit serves as the
19 director's official notification to the ~~person~~individual of the revocation, suspension, or
20 denial of driving privileges in this state.
- 21 2. If the issue to be determined by the hearing concerns license suspension for operating
22 a motor vehicle while having an alcohol concentration of at least eight one-hundredths
23 of one percent by weight or, with respect to an individual under twenty-one years of
24 age, an alcohol concentration of at least two one-hundredths of one percent by weight,
25 the hearing must be before a hearing officer assigned by the director and at a time ~~and~~
26 ~~place~~ designated by the director in the county in which the incident occurred unless
27 the individual consents to a different county or consents to have the hearing by
28 telephone. The hearing must be recorded and its scope may cover only the issues of
29 whether the arresting officer had reasonable grounds to believe the individual had
30 been driving or was in actual physical control of a vehicle in violation of section
31 39-08-01 or equivalent ordinance or, with respect to an individual under twenty-one

1 years of age, the individual had been driving or was in actual physical control of a
2 vehicle while having an alcohol concentration of at least two one-hundredths of one
3 percent by weight; whether the individual was placed under arrest, unless the
4 individual was under twenty-one years of age and the alcohol concentration was less
5 than eight one-hundredths of one percent by weight, then arrest is not required and is
6 not an issue under any provision of this chapter; whether the individual was tested in
7 accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02;
8 and whether the test results show the individual had an alcohol concentration of at
9 least eight one-hundredths of one percent by weight or, with respect to an individual
10 under twenty-one years of age, an alcohol concentration of at least two
11 one-hundredths of one percent by weight. For purposes of this section, a copy of a
12 certified copy of an analytical report of a blood or urine sample from the director of the
13 state crime laboratory or the director's designee, or electronically posted by the
14 director of the state crime laboratory or the director's designee on the crime laboratory
15 information management system and certified by a law enforcement officer or
16 individual who has authorized access to the crime laboratory management system
17 through the criminal justice data information sharing system or a certified copy of the
18 checklist and test records from a certified breath test operator, and a copy of a certified
19 copy of a certificate of the director of the state crime laboratory designating the
20 director's designees, establish prima facie the alcohol concentration or the presence of
21 drugs, or a combination thereof, shown therein.

- 22 3. If the issue to be determined by the hearing concerns license revocation for refusing to
23 submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a
24 hearing officer assigned by the director at a time and place designated by the director.
25 The hearing must be recorded. The scope of a hearing for refusing to submit to a test
26 under section 39-20-01 may cover only the issues of whether a law enforcement
27 officer had reasonable grounds to believe the ~~person~~individual had been driving or
28 was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent
29 ordinance or, with respect to a ~~person~~an individual under twenty-one years of age, the
30 ~~person~~individual had been driving or was in actual physical control of a vehicle while
31 having an alcohol concentration of at least two one-hundredths of one percent by

1 weight; whether the ~~person~~individual was placed under arrest; and whether that
2 ~~person~~the individual refused to submit to the test or tests. The scope of a hearing for
3 refusing to submit to a test under section 39-20-14 may cover only the issues of
4 whether the law enforcement officer had reason to believe the ~~person~~individual
5 committed a moving traffic violation or was involved in a traffic accident as a driver,
6 whether in conjunction with the violation or the accident the officer has, through the
7 officer's observations, formulated an opinion that the ~~person's~~individual's body
8 contains alcohol and, whether the ~~person~~individual refused to submit to the onsite
9 screening test.

10 4. At a hearing under this section, the regularly kept records of the director and state
11 crime laboratory may be introduced. Those records establish prima facie their contents
12 without further foundation. For purposes of this chapter, the following are deemed
13 regularly kept records of the director and state crime laboratory:

- 14 a. ~~Any~~A copy of a certified copy of an analytical report of a blood or urine sample
15 received by the director from the director of the state crime laboratory or the
16 director's designee or electronically posted by the director of the state crime
17 laboratory or the director's designee on the crime laboratory information
18 management system and certified by, and received from, a law enforcement
19 officer or an individual who has authorized access to the crime laboratory
20 management system through the criminal justice data information sharing
21 system, or a certified copy of the checklist and test records received by the
22 director from a certified breath test operator;
- 23 b. ~~Any~~A copy of a certified copy of a certificate of the director of the state crime
24 laboratory or the director's designee relating to approved methods, devices,
25 operators, materials, and checklists used for testing for alcohol concentration or
26 the presence of drugs received by the director from the director of the state crime
27 laboratory or the director's designee, or that have been electronically posted with
28 the state crime laboratory division of the attorney general at the attorney general
29 website; and
- 30 c. ~~Any~~A copy of a certified copy of a certificate of the director of the state crime
31 laboratory designating the director's designees.

- 1 5. At the close of the hearing, the hearing officer shall notify the ~~person~~individual of the
2 hearing officer's findings of fact, conclusions of law, and decision based on the
3 findings and conclusions and shall immediately deliver ~~to the person~~ a copy of the
4 decision to the individual. If the hearing officer does not find in favor of the
5 ~~person~~individual, the copy of the decision serves as the director's official notification to
6 the ~~person~~individual of the revocation, suspension, or denial of driving privileges in this
7 state. If the hearing officer finds, based on a preponderance of the evidence, ~~that the~~
8 ~~person~~individual refused a test under section 39-20-01 or 39-20-14 or ~~that the~~
9 ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one
10 percent by weight or, with respect to a ~~person~~an individual under twenty-one years of
11 age, an alcohol concentration of at least two one-hundredths of one percent by weight,
12 the hearing officer shall immediately take possession of the ~~person's~~individual's
13 temporary operator's permit issued under this chapter. If the hearing officer does not
14 find against the ~~person~~individual, the hearing officer shall sign, date, and mark on the
15 ~~person's~~individual's permit an extension of driving privileges for the next twenty days
16 and shall return the permit to the ~~person~~individual. The hearing officer shall report the
17 findings, conclusions, and decisions to the director within ten days of the conclusion of
18 the hearing. If the hearing officer has determined in favor of the ~~person~~individual, the
19 director shall return the ~~person's~~individual's operator's license by regular mail to the
20 address on file with the director under section 39-06-20.
- 21 6. If the ~~person~~individual who requested a hearing under this section fails to appear at
22 the hearing without justification, the right to the hearing is waived, and the hearing
23 officer's determination on license revocation, suspension, or denial will be based on
24 the written request for hearing, law enforcement officer's report, and other evidence as
25 may be available. The hearing officer shall, on the date for which the hearing is
26 scheduled, mail to the ~~person~~individual, by regular mail, at the address on file with the
27 director under section 39-06-20, or at any other address for the ~~person~~individual or the
28 ~~person's~~individual's legal representative supplied in the request for hearing, a copy of
29 the decision which serves as the director's official notification to the ~~person~~individual of
30 the revocation, suspension, or denial of driving privileges in this state. Even if the
31 ~~person~~individual for whom the hearing is scheduled fails to appear at the hearing, the

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- 1 hearing is deemed to have been held on the date for which it is scheduled for
- 2 purposes of appeal under section 39-20-06.