

HOUSE BILL NO. 1129

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to amend and reenact subsections 1, 5, and 6 of section 39-06.2-10.6, section
2 39-06.2-10.7, subsections 1, 5, and 6 of section 39-20-05, and section 39-20-06 of the North
3 Dakota Century Code, relating to hearing requirements for commercial vehicles and for
4 commercial and noncommercial driver's licenses.

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

6 **SECTION 1. AMENDMENT.** Subsections 1, 5, and 6 of section 39-06.2-10.6 of the North
7 Dakota Century Code are amended and reenacted as follows:

- 8 1. Before issuing an order of suspension, revocation, or disqualification under section
9 39-06.2-10, the director shall afford that person an opportunity for a hearing as
10 provided by section 39-20-05, if the person mails a request for the hearing to the
11 director within ten days after the date of issuance of the temporary driver's permit. The
12 administrative hearing may be conducted in total or in part by telephone, television,
13 facsimile services, or other electronic means as determined by the hearing officer.
- 14 5. ~~At~~Within ten days of the close of the hearing, the hearing officer shall ~~notify the person~~
15 ~~of~~issue the hearing officer's findings of fact, conclusions of law, and decision ~~based on~~
16 ~~the findings and conclusions~~ and shall immediately deliver to the person a copy of the
17 decision. ~~If the hearing officer does not find in favor of the person, the copy of the~~
18 ~~decision serves as the director's official notification to the person of the revocation,~~
19 ~~suspension, or denial of driving privileges in this state~~ by regular mail at the address
20 on file with the director under section 39-06-20 or at any other address for the person
21 or the person's legal representative supplied in the request for hearing. The person's
22 temporary driver's permit remains in effect until three days after the date of mailing of
23 the decision. The hearing officer's decision terminates any temporary driver's permit
24 issued under this chapter. If the hearing officer finds, based on a preponderance of the

1 evidence, that the person refused a test under section 39-06.2-10.2 or that the person
2 had an alcohol concentration of at least four one-hundredths of one percent by weight,
3 ~~the hearing officer shall immediately take possession of the person's temporary~~
4 ~~driver's permit issued under this chapter. If the hearing officer does not find against the~~
5 ~~person, the hearing officer shall sign, date, and mark on the person's permit an~~
6 ~~extension of driving privileges for the next twenty days and shall return the permit to~~
7 ~~the person.~~the copy of the decision serves as the director's official notification to the
8 person of the revocation, suspension, or denial of driving privileges in this state. If the
9 hearing officer finds in favor of the person, the decision must include a notice of
10 reinstatement unless the person is otherwise ineligible for driving privileges. The
11 hearing officer shall report the findings, conclusions, and decisions to the director
12 within ten days of the ~~conclusion~~date of the hearing. If the hearing officer has
13 determined in favor of the person, the director shall return the person's commercial
14 driver's license by regular mail to the address on file with the director under section
15 39-06.2-08.

- 16 6. If the person who requested a hearing under this section fails to appear at the hearing
17 without justification, the right to the hearing is waived, and the hearing officer's
18 determination on license revocation, suspension, or denial will be based on the written
19 request for hearing, law enforcement officer's report, and other evidence as may be
20 available. ~~On the date for which~~Within ten days after the close of the hearing is
21 ~~scheduled,~~ the hearing officer shall mail to the person, by regular mail, at the address
22 on file with the director under section 39-06-20, or at any other address for the person
23 or the person's legal representative supplied in the request for hearing, a copy of the
24 decision which serves as the director's official notification to the person of the
25 revocation, suspension, or denial of driving privileges in this state. Even if the person
26 for whom the hearing is scheduled fails to appear at the hearing, the hearing is
27 deemed to have been held on the date for which it is scheduled for purposes of appeal
28 under section 39-06.2-10.7.

29 **SECTION 2. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **39-06.2-10.7. Judicial review.**

2 Any person whose commercial driver's license or privilege has been suspended, revoked,
3 or denied by the decision of the hearing officer under section 39-06.2-10.6 may appeal within
4 seven days after the date of the hearing under section 39-06.2-10.6 as shown by the
5 ~~date~~mailing of the hearing officer's decision, section 28-32-42 notwithstanding, by serving on
6 the director and filing a notice of appeal and specifications of error in the district court in the
7 county where the events occurred for which the demand for a test was made, or in the county in
8 which the administrative hearing was held. The court shall set the matter for hearing, and the
9 petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer
10 who rendered the decision. Neither the director nor the court may stay the decision pending
11 decision on appeal. Within twenty days after receipt of the notice of appeal, the director or the
12 hearing officer who rendered the decision shall file in the office of the clerk of court to which the
13 appeal is taken a certified transcript of the testimony and all other proceedings. It is the record
14 on which the appeal must be determined. No additional evidence may be heard. The court shall
15 affirm the decision of the director or hearing officer unless it finds the evidence insufficient to
16 warrant the conclusion reached by the director or hearing officer. The court may direct that the
17 matter be returned to the director or hearing officer for rehearing and the presentation of
18 additional evidence.

19 **SECTION 3. AMENDMENT.** Subsections 1, 5, and 6 of section 39-20-05 of the North
20 Dakota Century Code are amended and reenacted as follows:

21 1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or
22 39-20-04.1, the director shall afford that person an opportunity for a hearing if the
23 person mails or communicates by other means authorized by the director a request for
24 the hearing to the director within ten days after the date of issuance of the temporary
25 operator's permit. Upon completion of the hearing, an individual may elect to
26 participate in the twenty-four seven sobriety program under chapter 54-12. The
27 hearing must be held within thirty days after the date of issuance of the temporary
28 operator's permit. If no hearing is requested within the time limits in this section, and
29 no affidavit is submitted within the time limits under subsection 2 of section 39-20-04,
30 and if the individual has not provided the director with written notice of election to
31 participate in the twenty-four seven sobriety program under chapter 54-12, the

1 expiration of the temporary operator's permit serves as the director's official
2 notification to the person of the revocation, suspension, or denial of driving privileges
3 in this state. The administrative hearing may be conducted in total or in part by
4 telephone, television, facsimile services, or other electronic means as determined by
5 the hearing officer.

- 6 5. ~~At~~Within ten days of the close of the hearing, the hearing officer shall ~~notify the person~~
7 ~~of~~issue the hearing officer's findings of fact, conclusions of law, and decision ~~based on~~
8 ~~the findings and conclusions~~ and shall immediately deliver to the person a copy of the
9 decision. ~~If the hearing officer does not find in favor of the person, the copy of the~~
10 ~~decision serves as the director's official notification to the person of the revocation,~~
11 ~~suspension, or denial of driving privileges in this state~~ by regular mail at the address
12 on file with the director under section 39-06-20 or at any other address for the person
13 or the person's legal representative supplied in the request for hearing. The person's
14 temporary operator's permit remains in effect until three days after the date of mailing
15 of the decision. The hearing officer's decision terminates any temporary operator's
16 permit issues under this chapter. If the hearing officer finds, based on a
17 preponderance of the evidence, that the person refused a test under section 39-20-01
18 or 39-20-14 or that the person had an alcohol concentration of at least eight
19 one-hundredths of one percent by weight or, with respect to a person under
20 twenty-one years of age, an alcohol concentration of at least two one-hundredths of
21 one percent by weight, ~~the hearing officer shall immediately take possession of the~~
22 ~~person's temporary operator's permit issued under this chapter. If the hearing officer~~
23 ~~does not find against the person, the hearing officer shall sign, date, and mark on the~~
24 ~~person's permit an extension of driving privileges for the next twenty days and shall~~
25 ~~return the permit to the person~~the copy of the decision serves as the director's official
26 notification to the person of the revocation, suspension, or denial of driving privileges
27 in this state. If the hearing officer finds in favor of the person, the decision must include
28 a notice of reinstatement unless the person is otherwise ineligible for driving privileges.
29 The hearing officer shall report the findings, conclusions, and decisions to the director
30 within ten days of the ~~conclusion~~date of the hearing. If the hearing officer has

1 determined in favor of the person, the director shall return the person's operator's
2 license by regular mail to the address on file with the director under section 39-06-20.
3 6. If the person who requested a hearing under this section fails to appear at the hearing
4 without justification, the right to the hearing is waived, and the hearing officer's
5 determination on license revocation, suspension, or denial will be based on the written
6 request for hearing, law enforcement officer's report, and other evidence as may be
7 available. The hearing officer shall, ~~on the date for which the hearing is~~
8 ~~scheduled~~within ten days after the close of the hearing, mail to the person, by regular
9 mail, at the address on file with the director under section 39-06-20, or at any other
10 address for the person or the person's legal representative supplied in the request for
11 hearing, a copy of the decision which serves as the director's official notification to the
12 person of the revocation, suspension, or denial of driving privileges in this state. Even
13 if the person for whom the hearing is scheduled fails to appear at the hearing, the
14 hearing is deemed to have been held on the date for which it is scheduled for
15 purposes of appeal under section 39-20-06.

16 **SECTION 4. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **39-20-06. Judicial review.**

19 Any person whose operator's license or privilege has been suspended, revoked, or denied
20 by the decision of the hearing officer under section 39-20-05 may appeal within seven days
21 after the date of the ~~hearing under section 39-20-05 as shown by the date~~mailing of the hearing
22 officer's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice
23 of appeal and specifications of error in the district court in the county where the events occurred
24 for which the demand for a test was made, or in the county in which the administrative hearing
25 was held. The court shall set the matter for hearing, and the petitioner shall give twenty days'
26 notice of the hearing to the director and to the hearing officer who rendered the decision.
27 Neither the director nor the court may stay the decision pending decision on appeal. Within
28 twenty days after receipt of the notice of appeal, the director or the hearing officer who rendered
29 the decision shall file in the office of the clerk of court to which the appeal is taken a certified
30 transcript of the testimony and all other proceedings. It is the record on which the appeal must
31 be determined. No additional evidence may be heard. The court shall affirm the decision of the

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- 1 director or hearing officer unless it finds the evidence insufficient to warrant the conclusion
- 2 reached by the director or hearing officer. The court may direct that the matter be returned to
- 3 the director or hearing officer for rehearing and the presentation of additional evidence.