

Sixty-fifth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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~~fifteen days after the date of issuance of the temporary driver's  
12 permit. If any participant to the hearing is unavailable to appear in person, the  
13 administrative hearing may be conducted in total or in part by television or other  
14 electronic video means as determined by the hearing officer.
- 15 5. ~~At~~Within ten days of the close of the hearing, the hearing officer shall ~~notify the person~~  
16 ~~of~~issue the hearing officer's findings of fact, conclusions of law, and decision ~~based on~~  
17 ~~the findings and conclusions~~ and shall immediately deliver to the person a copy of the  
18 decision. ~~If the hearing officer does not find in favor of the person, the copy of the~~  
19 ~~decision serves as the director's official notification to the person of the revocation,~~  
20 ~~suspension, or denial of driving privileges in this state~~ by regular mail at the address  
21 on file with the director under section 39-06-20 or at any other address for the person  
22 or the person's legal representative supplied in the request for hearing. The person's  
23 temporary driver's permit remains in effect until three days after the date of mailing of  
24 the decision. The hearing officer's decision terminates any temporary driver's permit

1 issued under this chapter. If the hearing officer finds, based on a preponderance of the  
2 evidence, that the person refused a test under section 39-06.2-10.2 or that the person  
3 had an alcohol concentration of at least four one-hundredths of one percent by weight,  
4 ~~the hearing officer shall immediately take possession of the person's temporary~~  
5 ~~driver's permit issued under this chapter. If the hearing officer does not find against the~~  
6 ~~person, the hearing officer shall sign, date, and mark on the person's permit an~~  
7 ~~extension of driving privileges for the next twenty days and shall return the permit to~~  
8 ~~the person~~the copy of the decision serves as the director's official notification to the  
9 person of the revocation, suspension, or denial of driving privileges in this state. If the  
10 hearing officer finds in favor of the person, the decision must include a notice of  
11 reinstatement unless the person is otherwise ineligible for driving privileges. The  
12 hearing officer shall report the findings, conclusions, and decisions to the director  
13 within ten days of the ~~conclusion~~date of the hearing. If the hearing officer has  
14 determined in favor of the person, the director shall return the person's commercial  
15 driver's license by regular mail to the address on file with the director under section  
16 39-06.2-08.

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

30 **SECTION 2. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code is  
31 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~~ forty-five days after the date of issuance of the  
28 temporary operator's permit. If no hearing is requested within the time limits in this  
29 section, and no affidavit is submitted within the time limits under subsection 2 of  
30 section 39-20-04, and if the individual has not provided the director with written notice  
31 of election to participate in the twenty-four seven sobriety program under chapter

1 54-12, the 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. If any participant to the hearing is unavailable to appear in person, the  
4 administrative hearing may be conducted in total or in part by television or other  
5 electronic video means as determined by 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.