

Fifty-fifth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1111

Introduced by

Representatives Martinson, Carlisle, DeKrey

Senators Andrist, Kringstad, Nalewaja

(At the request of the Department of Transportation)

1 A BILL for an Act to amend and reenact subsection 7 of section 39-06-32, sections 39-20-01,
2 39-20-03.1, 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2, 3, and 5 of section
3 39-20-05, subsection 3 of section 39-20-07, and section 39-20-09 of the North Dakota Century
4 Code, relating to the illegal level of alcohol and drug concentration for motor vehicle operators
5 under twenty-one years of age.

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

7 **SECTION 1. AMENDMENT.** Subsection 7 of section 39-06-32 of the 1995 Supplement
8 to the North Dakota Century Code is amended and reenacted as follows:

9 7. An administrative decision in another state that the licensee's privilege to drive in
10 that state is suspended or revoked because of a violation of that state's law
11 forbidding motor vehicle operation with an alcohol concentration of at least ten
12 one-hundredths of one percent by weight or, with respect to a person under
13 twenty-one years of age, an alcohol concentration of at least two one-hundredths
14 of one percent by weight, or because of a violation of that state's law forbidding the
15 driving or being in actual physical control of a commercial motor vehicle while
16 having an alcohol concentration of at least four one-hundredths of one percent by
17 weight. The specific requirements for establishing the violation in the other state
18 may not be considered and certified copies of the records of the other state's
19 drivers licensing authority are sufficient evidence of the violation. The suspension
20 must be for the same duration as the suspension in section 39-20-04.1, if the
21 violation does not involve a commercial motor vehicle. If the violation involves a
22 commercial motor vehicle, the period of suspension must be the same as the
23 period of suspension provided in section 39-06.2-10.

1 **SECTION 2. AMENDMENT.** Section 39-20-01 of the 1995 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **39-20-01. Implied consent to determine alcohol and drug content of blood.** Any
4 person who operates a motor vehicle on a highway or on public or private areas to which the
5 public has a right of access for vehicular use in this state is deemed to have given consent, and
6 shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood,
7 breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination
8 thereof, content of the blood. As used in this chapter the word "drug" means any drug or
9 substance or combination of drugs or substances which renders a person incapable of safely
10 driving, and the words "chemical test" or "chemical analysis" mean any test to determine the
11 alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine,
12 approved by the state toxicologist under this chapter. The test or tests must be administered at
13 the direction of a law enforcement officer only after placing the person, except persons
14 mentioned in section 39-20-03, under arrest and informing that person that the person is or will
15 be charged with the offense of driving or being in actual physical control of a vehicle upon the
16 public highways while under the influence of intoxicating liquor, drugs, or a combination thereof.
17 For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a
18 person under twenty-one years of age satisfies the requirement of an arrest. The law
19 enforcement officer shall also inform the person charged that refusal of the person to submit to
20 the test determined appropriate will result in a revocation for up to three years of the person's
21 driving privileges. The law enforcement officer shall determine which of the tests is to be used.
22 When a person under the age of eighteen years is taken into custody for violating section
23 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the
24 person's parent or legal guardian to explain the cause for the custody. Neither the law
25 enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
26 may be permitted to interfere with the administration of chemical testing requirements under this
27 chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the
28 minor within ten days after the test results are received or within ten days after the minor is
29 taken into custody if the minor refuses to submit to testing. The notice must contain a
30 statement of the test performed and the results of that test; or if the minor refuses to submit to
31 the testing, a statement notifying of that fact. The attempt to contact or the contacting or

notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the person in custody.

SECTION 3. AMENDMENT. Section 39-20-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-03.1. Action following test result for a resident operator. If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person

1 lives. On that notification, that law enforcement agency shall immediately take
2 possession of the person's North Dakota operator's license or permit if it is then
3 available and, within twenty-four hours, forward the license and a copy of the
4 temporary operator's permit to the law enforcement agency making the arrest or to
5 the director. The law enforcement agency shall also, on taking possession of the
6 person's operator's license, issue to that person a temporary operator's permit as
7 provided in this section, and shall sign and date the permit as provided in
8 subsection 1. The temporary operator's permit serves as the director's official
9 notification to the person of the director's intent to revoke, suspend, or deny driving
10 privileges in this state.

- 11 3. The law enforcement officer, within five days of the issuance of the temporary
12 operator's permit, shall forward to the director a certified written report in the form
13 required by the director and the person's operator's license taken under subsection
14 1 or 2. If the person was issued a temporary operator's permit because of the
15 results of a test, the report must show that the officer had reasonable grounds to
16 believe the person had been driving or was in actual physical control of a motor
17 vehicle while in violation of section 39-08-01, or equivalent ordinance, that the
18 person was lawfully arrested, that the person was tested for alcohol concentration
19 under this chapter, and that the results of the test show that the person had an
20 alcohol concentration of at least ten one-hundredths of one percent by weight or,
21 with respect to a person under twenty-one years of age, an alcohol concentration
22 of at least two one-hundredths of one percent by weight. In addition to the
23 operator's license and report, the law enforcement officer shall forward to the
24 director 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, saliva, or
26 urine test for all tests administered at the direction of the officer.

27 **SECTION 4. AMENDMENT.** Section 39-20-03.2 of the 1995 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **39-20-03.2. Action following test result or on refusing test by nonresident**
30 **operator.** If a person licensed in another state refuses in this state to submit to a test provided
31 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,

1 or 39-20-03 and the test results show the person to have an alcohol concentration of at least
2 ten one-hundredths of one percent by weight or, with respect to a person under twenty-one
3 years of age, an alcohol concentration of at least two one-hundredths of one percent by weight
4 at the time of performance of a test within two hours after driving or being in physical control of
5 a motor vehicle, the following procedures apply:

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

to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

SECTION 5. AMENDMENT. Subsection 1 of section 39-20-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
 - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.
 - b. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once

1 previously violated section 39-08-01 or equivalent ordinance or the person's
2 operator's license has once previously been suspended or revoked under this
3 chapter.

- 4 c. For two years if the person's driving record shows that within the five years
5 preceding the date of the arrest, the person's operator's license has at least
6 twice previously been suspended, revoked, or issuance denied under this
7 chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any
8 combination thereof, and the suspensions, revocations, or denials resulted
9 from at least two separate arrests.

10 **SECTION 6. AMENDMENT.** Subsections 2, 3, and 5 of section 39-20-05 of the 1995
11 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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

1 one-hundredths of one percent by weight. For purposes of this section, a copy of a
2 certified copy of an analytical report of a blood, urine, or saliva sample from the
3 state toxicologist, or a certified copy of the checklist and test records from a
4 certified breath test operator establish prima facie the alcohol concentration shown
5 therein. Whether the person was informed that the privilege to drive might be
6 suspended based on the results of the test is not an issue.

- 7 3. If the issue to be determined by the hearing concerns license revocation for
8 refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must
9 be before a hearing officer assigned by the director at a time and place designated
10 by the director. The hearing must be recorded. The scope of a hearing for
11 refusing to submit to a test under section 39-20-01 may cover only the issues of
12 whether a law enforcement officer had reasonable grounds to believe the person
13 had been driving or was in actual physical control of a vehicle in violation of section
14 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one
15 years of age, the person had been driving or was in actual physical control of a
16 vehicle while having an alcohol concentration of at least two one-hundredths of one
17 percent by weight; whether the person was placed under arrest; and whether that
18 person refused to submit to the test or tests. The scope of a hearing for refusing to
19 submit to a test under section 39-20-14 may cover only the issues of whether the
20 law enforcement officer had reason to believe the person committed a moving
21 traffic violation or was involved in a traffic accident as a driver, whether in
22 conjunction with the violation or the accident the officer has, through the officer's
23 observations, formulated an opinion that the person's body contains alcohol and,
24 whether the person refused to submit to the onsite screening test. Whether the
25 person was informed that the privilege to drive would be revoked or denied for
26 refusal to submit to the test or tests is not an issue.
- 27 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
28 officer's findings of fact, conclusions of law, and decision based on the findings and
29 conclusions and shall immediately deliver to the person a copy of the decision. If
30 the hearing officer does not find in favor of the person, the copy of the decision
31 serves as the director's official notification to the person of the revocation,

suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

SECTION 7. AMENDMENT. Subsection 3 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A person having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.

SECTION 8. AMENDMENT. Section 39-20-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

39-20-09. Effect of evidence of chemical test. ~~The provisions of this~~ This chapter ~~does~~ not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test results show an alcohol concentration of at least ten one-hundredths of one percent or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the purpose of such

- 1 evidence must be limited to the issues of probable cause, whether an arrest was made prior to
- 2 the administering of the test, and the validity of the test results.