

HOUSE BILL NO. 1439

Introduced by

Representative Weiler

Senator Nething

1 A BILL for an Act to amend and reenact sections 39-06-32 and 39-06-35, subsection 7 of
2 section 39-06.1-10, sections 39-08-01, 39-08-01.3, 39-20-03.1, and 39-20-03.2, subsection 1 of
3 section 39-20-04.1, subsections 2 and 5 of section 39-20-05, and sections 39-20-07 and
4 39-20-09 of the North Dakota Century Code, relating to the level of alcohol concentration
5 prohibited for motor vehicle operators and consequences for driving while under the influence.

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

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

9 **39-06-32. Authority to suspend licenses.** The director may suspend the license of
10 an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the
11 following apply to the licensee:

- 12 1. Commission of an offense for which mandatory revocation of license is required
13 upon conviction.
- 14 2. Incompetence to drive a motor vehicle.
- 15 3. Unlawful or fraudulent use of an operator's license.
- 16 4. Refusal to submit to an implied consent chemical test on an Indian reservation or in
17 another state. For purposes of this subsection, the specific requirements for
18 establishing a refusal used on the Indian reservation or in the other state may not
19 be considered, and photostatic copies of the records of the other jurisdiction's
20 drivers licensing authority are sufficient evidence of the refusal whether or not
21 those copies are certified. The suspension must be for the same length of time as
22 the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a
23 person while operating a commercial motor vehicle, the period of suspension must
24 be the same as the period of revocation provided in section 39-06.2-10.

- 1 5. Failure, as shown by the certificate of the court, to pay a fine or serve any other
- 2 sentence as ordered by a court upon conviction for any criminal traffic offense.
- 3 6. Failure, as shown by the certificate of the court, to appear in court or post and
- 4 forfeit bond after signing a promise to appear, if signing is required by law, in
- 5 violation of section 39-06.1-04, willful violation of a written promise to appear in
- 6 court, in violation of section 39-07-08, or violation of equivalent ordinances or laws
- 7 in another jurisdiction. Upon resolution by the operator of the underlying cause for
- 8 a suspension under this subsection, as shown by the certificate of the court, the
- 9 director shall record the suspension separately on the driving record. This
- 10 separate record is not available to the public.
- 11 7. An administrative decision on an Indian reservation or in another state that the
- 12 licensee's privilege to drive on that Indian reservation or in that state is suspended
- 13 or revoked because of a violation of that Indian reservation's or state's law
- 14 forbidding motor vehicle operation with an alcohol concentration of at least ~~ten~~
- 15 eight one-hundredths of one percent by weight or, with respect to a person under
- 16 twenty-one years of age, an alcohol concentration of at least two one-hundredths
- 17 of one percent by weight, or because of a violation of that Indian reservation's or
- 18 state's law forbidding the driving or being in actual physical control of a commercial
- 19 motor vehicle while having an alcohol concentration of at least four one-hundredths
- 20 of one percent by weight. The specific requirements for establishing the violation
- 21 on the Indian reservation or in the other state may not be considered and certified
- 22 copies of the records of the Indian reservation's or other state's drivers licensing
- 23 authority are sufficient evidence of the violation. The suspension must be for the
- 24 same duration as the suspension in section 39-20-04.1, if the violation does not
- 25 involve a commercial motor vehicle. If the violation involves a commercial motor
- 26 vehicle, the period of suspension must be the same as the period of suspension
- 27 provided in section 39-06.2-10.
- 28 8. Conviction of an offense under this title and it appears from the director's records
- 29 that the offense contributed to causing an accident which resulted in death or
- 30 serious personal injury or serious property damage. No suspension may be

imposed if the person has been sanctioned for the same offense under section 39-06-31.

SECTION 2. AMENDMENT. Section 39-06-35 of the North Dakota Century Code is amended and reenacted as follows:

39-06-35. Period of suspension. When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the director a reinstatement fee of fifty dollars, or twenty-five dollars if the suspension was the result of a suspension under subsection 4, 5, or 7 of section 39-06-03 or subsection 2 of section 39-06-32, or one hundred dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until compliance with subsection 3.1 of section 39-06.1-10. Upon payment of the reinstatement fee and any surcharge the license must be returned to the operator. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20. If a license was suspended as a result of a violation of section 39-08-01 or chapter 39-20, the operator shall pay a surcharge of one hundred dollars for deposit in a special fund subject to legislative appropriation for use to purchase law enforcement equipment.

SECTION 3. AMENDMENT. Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:

- a. ~~Ninety-one~~ Three hundred sixty-five days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation. The director shall reduce the suspension to one hundred twenty days upon proof of an evaluation by an appropriate licensed addiction treatment program and compliance with any recommended treatment in the evaluation.
- b. ~~Three hundred sixty-five days~~ Three years if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation. The director shall reduce the

suspension to five hundred forty-seven days upon proof of an evaluation by
an appropriate licensed addiction treatment program and compliance with any
recommended treatment in the evaluation.

- c. ~~Two~~ Five years if the operator's record shows the person has at least twice
violated section 39-08-01 or equivalent ordinance within the five years
preceding the last violation.

SECTION 4. AMENDMENT. Section 39-08-01 of the North Dakota Century Code is
amended and reenacted as follows:

**39-08-01. (Effective through July 31, 2003) Persons under the influence of
intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

1. A person may not drive or be in actual physical control of any vehicle upon a
highway or upon public or private areas to which the public has a right of access
for vehicular use in this state if any of the following apply:
 - a. That person has an alcohol concentration of at least ten 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.
 - b. That person is under the influence of intoxicating liquor.
 - c. That person is under the influence of any drug or substance or combination of
drugs or substances to a degree which renders that person incapable of
safely driving.
 - d. That person is under the combined influence of alcohol and any other drugs
or substances to a degree which renders that person incapable of safely
driving.

The fact that any person charged with violating this section is or has been legally
entitled to use alcohol or other drugs or substances is not a defense against any
charge for violating this section, unless a drug which predominately caused
impairment was used only as directed or cautioned by a practitioner who legally
prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of a class B
misdemeanor for the first or second offense in a five-year period, of a class A
misdemeanor for a third offense in a five-year period, of a class A misdemeanor for

the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.

4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.

a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.

b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- 1 d. For a fourth or subsequent offense within seven years, the sentence must
2 include one hundred eighty days' imprisonment or placement in a minimum
3 security facility, of which forty-eight hours must be served consecutively; a
4 fine of one thousand dollars; and an order for addiction evaluation by an
5 appropriate licensed treatment program.
- 6 e. The execution or imposition of sentence under this section may not be
7 suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an
8 offense subject to subdivision a or b. If the offense is subject to subdivision c
9 or d, the district court may suspend a sentence, except for ten days'
10 imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition
11 that the defendant first undergo and complete an evaluation for alcohol and
12 substance abuse treatment and rehabilitation. If the defendant is found to be
13 in need of alcohol and substance abuse treatment and rehabilitation, the
14 district court may order the defendant placed under the supervision and
15 management of the department of corrections and rehabilitation and is subject
16 to the conditions of probation under section 12.1-32-07. The district court
17 shall require the defendant to complete alcohol and substance abuse
18 treatment and rehabilitation under the direction of the drug court program as a
19 condition of probation in accordance with rules adopted by the supreme court.
20 If the district court finds that a defendant has failed to undergo an evaluation
21 or complete treatment or has violated any condition of probation, the district
22 court shall revoke the defendant's probation and shall sentence the defendant
23 in accordance with this subsection.
- 24 f. For purposes of this section, conviction of an offense under a law or
25 ordinance of another state which is equivalent to this section must be
26 considered a prior offense if such offense was committed within the time
27 limitations specified in this subsection.
- 28 g. If the penalty mandated by this section includes imprisonment or placement
29 upon conviction of a violation of this section or equivalent ordinance, and if an
30 addiction evaluation has indicated that the defendant needs treatment, the
31 court may order the defendant to undergo treatment at an appropriate

1 licensed addiction treatment program and the time spent by the defendant in
2 the treatment must be credited as a portion of a sentence of imprisonment or
3 placement under this section.

- 4 5. As used in subdivision b of subsection 4, the term "imprisonment" includes house
5 arrest. As a condition of house arrest, a defendant may not consume alcoholic
6 beverages. The house arrest must include a program of electronic home detention
7 in which the defendant is tested at least twice daily for the consumption of alcohol.
8 The defendant shall defray all costs associated with the electronic home detention.
9 This subsection does not apply to individuals committed to or under the supervision
10 and management of the department of corrections and rehabilitation.

11 **(Effective after July 31, 2003) Persons under the influence of intoxicating liquor or**
12 **any other drugs or substances not to operate vehicle - Penalty.**

- 13 1. A person may not drive or be in actual physical control of any vehicle upon a
14 highway or upon public or private areas to which the public has a right of access
15 for vehicular use in this state if any of the following apply:
- 16 a. That person has an alcohol concentration of at least ~~ten~~ eight one-hundredths
17 of one percent by weight at the time of the performance of a chemical test
18 within two hours after the driving or being in actual physical control of a
19 vehicle.
 - 20 b. That person is under the influence of intoxicating liquor.
 - 21 c. That person is under the influence of any drug or substance or combination of
22 drugs or substances to a degree which renders that person incapable of
23 safely driving.
 - 24 d. That person is under the combined influence of alcohol and any other drugs
25 or substances to a degree which renders that person incapable of safely
26 driving.

27 The fact that any person charged with violating this section is or has been legally
28 entitled to use alcohol or other drugs or substances is not a defense against any
29 charge for violating this section, unless a drug which predominately caused
30 impairment was used only as directed or cautioned by a practitioner who legally
31 prescribed or dispensed the drug to that person.

- 1 2. A person violating this section or equivalent ordinance is guilty of a class ~~B~~ A
2 misdemeanor for the first or second offense in a five-year period, of a class A
3 ~~misdemeanor~~ C felony for a third or subsequent offense in a five-year period, ~~of a~~
4 ~~class A misdemeanor for the fourth offense in a seven-year period, and of a~~
5 ~~class C felony for a fifth or subsequent offense in a seven-year period.~~ The
6 minimum penalty for violating this section is as provided in subsection 4. The court
7 shall take judicial notice of the fact that an offense would be a subsequent offense
8 if indicated by the records of the director or may make a subsequent offense
9 finding based on other evidence.
- 10 3. Upon conviction, the court may order the motor vehicle number plates of the motor
11 vehicle owned and operated by the offender at the time of the offense to be
12 impounded for the duration of the period of suspension or revocation of the
13 offender's driving privilege by the licensing authority. The impounded number
14 plates must be sent to the director who must retain them for the period of
15 suspension or revocation, subject to their disposition by the court.
- 16 4. A person convicted of violating this section, or an equivalent ordinance, must be
17 sentenced in accordance with this subsection.
- 18 a. For a first offense, the sentence must include ~~both~~ at least ten days'
19 imprisonment or placement in a minimum security facility of which all except
20 twenty-four consecutive hours may be suspended, forty hours' community
21 service, a fine of at least ~~two~~ three hundred fifty dollars, and an order for
22 addiction evaluation by an appropriate licensed addiction treatment program.
- 23 b. For a second offense within five years, the sentence must include thirty days'
24 community service, at least ~~five~~ ninety days' imprisonment or placement in a
25 minimum security facility; of which all except five days may be suspended and
26 forty-eight hours must be served consecutively, ~~or thirty days' community~~
27 ~~service;~~ a fine of at least ~~five~~ six hundred dollars; and an order for addiction
28 evaluation by an appropriate licensed addiction treatment program.
- 29 c. For a third offense within five years, the sentence must include thirty days'
30 community service, at least ~~sixty~~ one hundred twenty days' imprisonment or
31 placement in a minimum security facility; all of which except for thirty days

1 may be suspended and forty-eight hours must be served consecutively; a
2 fine of one thousand dollars; and an order for addiction evaluation by an
3 appropriate licensed addiction treatment program. However, if the third or
4 subsequent offense is for a blood alcohol content greater or equal to
5 seventeen one-hundredths of one percent by weight but less than twenty
6 one-hundredths of one percent by weight, the fine must be at least two
7 thousand dollars. If the blood alcohol content is equal to or greater than
8 twenty one-hundredths of one percent by weight but less than twenty-five
9 one-hundredths of one percent by weight, the fine must be at least three
10 thousand dollars. If the blood alcohol content is equal to or greater than
11 twenty-five one-hundredths of one percent by weight, the fine must be at least
12 four thousand dollars.

13 d. ~~For a fourth or subsequent offense within seven years, the sentence must~~
14 ~~include one hundred eighty days' imprisonment or placement in a minimum~~
15 ~~security facility, of which forty eight hours must be served consecutively and a~~
16 ~~fine of one thousand dollars.~~

17 e. ~~The~~ Unless specifically provided for in this section, the execution or imposition
18 of sentence under this section may not be suspended or deferred under
19 subsection 3 or 4 of section 12.1-32-02.

20 f. ~~e.~~ For purposes of this section, conviction of an offense under a law or
21 ordinance of another state which is equivalent to this section must be
22 considered a prior offense if such offense was committed within the time
23 limitations specified in this subsection.

24 g. ~~f.~~ If the penalty mandated by this section includes imprisonment or placement
25 upon conviction of a violation of this section or equivalent ordinance, and if an
26 addiction evaluation has indicated that the defendant needs treatment, the
27 court ~~may~~ shall order the defendant to undergo treatment at an appropriate
28 licensed addiction treatment program and the time spent by the defendant in
29 the treatment must be credited as a portion of a sentence of imprisonment or
30 placement under this section.

1 5. ~~As used in subdivision b of subsection 4, the~~ The term "imprisonment" includes
2 house arrest after serving the mandatory sentence. As a condition of house arrest,
3 a defendant may not consume alcoholic beverages. The house arrest must
4 include a program of electronic home detention in which the defendant is tested at
5 least twice daily for the consumption of alcohol. The defendant shall defray all
6 costs associated with the electronic home detention. This subsection does not
7 apply to individuals committed to or under the supervision and management of the
8 department of corrections and rehabilitation.

9 **SECTION 5. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the**
12 **seizure, forfeiture, and sale of motor vehicles.** A motor vehicle owned and operated by a
13 person upon a highway or upon public or private areas to which the public has a right of access
14 for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an
15 order of the court at the time of sentencing if the person is in violation of section 39-08-01 or an
16 equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent
17 ordinance at least one other time within the five years preceding the violation. The motor
18 vehicle shall be seized, forfeited, and sold or otherwise disposed of if the person is in violation
19 of section 39-08-01 and the violation is during a period the person's license was suspended for
20 a violation of section 39-08-01. Any money collected by the state under this section shall be
21 deposited in a special fund subject to legislative appropriation for alcohol and drug treatment,
22 rehabilitation, prevention, and education programs. The court may ~~also~~ require that an ignition
23 interlock device be installed for a first offense under section 39-08-01 and shall require that an
24 ignition interlock device be installed for a second or subsequent offense in all of the person's
25 vehicle vehicles for a period of time that the court deems appropriate after the conclusion of the
26 suspension or revocation.

27 **SECTION 6. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
28 amended and reenacted as follows:

29 **39-20-03.1. Action following test result for a resident operator.** If a person submits
30 to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have
31 an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with

1 respect to a person under twenty-one years of age, an alcohol concentration of at least two
2 one-hundredths of one percent by weight at the time of the performance of a chemical test
3 within two hours after the driving or being in actual physical control of a vehicle, the following
4 procedures apply:

- 5 1. The law enforcement officer shall immediately take possession of the person's
6 operator's license if it is then available and shall immediately issue to that person a
7 temporary operator's permit if the person then has valid operating privileges,
8 extending driving privileges for the next twenty-five days, or until earlier terminated
9 by the decision of a hearing officer under section 39-20-05. The law enforcement
10 officer shall sign and note the date on the temporary operator's permit. The
11 temporary operator's permit serves as the director's official notification to the
12 person of the director's intent to revoke, suspend, or deny driving privileges in this
13 state.
- 14 2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine
15 sample or by drawing blood as provided in section 39-20-02 and the person tested
16 is not a resident of an area in which the law enforcement officer has jurisdiction,
17 the law enforcement officer shall, on receiving the analysis of the saliva, urine, or
18 blood from the state toxicologist and if the analysis shows that person had an
19 alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight
20 or, with respect to a person under twenty-one years of age, an alcohol
21 concentration of at least two one-hundredths of one percent by weight, either
22 proceed in accordance with subsection 1 during that person's reappearance within
23 the officer's jurisdiction or notify a law enforcement agency having jurisdiction
24 where the person lives. On that notification, that law enforcement agency shall
25 immediately take possession of the person's North Dakota operator's license or
26 permit if it is then available and, within twenty-four hours, forward the license and a
27 copy of the temporary operator's permit to the law enforcement agency making the
28 arrest or to the director. The law enforcement agency shall also, on taking
29 possession of the person's operator's license, issue to that person a temporary
30 operator's permit as provided in this section, and shall sign and date the permit as
31 provided in subsection 1. 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.

3. The law enforcement officer, within five days of the issuance of the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and the person's operator's license taken under subsection 1 or 2. 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~~ eight 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. In addition to the operator's license and report, the law enforcement officer shall forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer.

SECTION 7. AMENDMENT. Section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

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

operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have an alcohol concentration of at least ~~ten~~ eight 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 performance of a test within two hours after driving or being in physical control of a motor vehicle, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state

for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and 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, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least ~~ten~~ eight 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, shall mail or issue to the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the 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~~ eight

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 8. AMENDMENT. Subsection 1 of section 39-20-04.1 of 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~~ eight 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~~ 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 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. The director shall reduce the suspension to one hundred twenty days upon proof of an evaluation by an appropriate licensed addiction treatment program and compliance with the recommended treatment in the evaluation.

b. For ~~three hundred sixty-five days~~ three years if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter. The director shall reduce the suspension to five hundred forty-seven days upon proof of an evaluation by an appropriate licensed

addiction treatment program and compliance with the recommended
treatment in the evaluation.

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

SECTION 9. AMENDMENT. Subsections 2 and 5 of section 39-20-05 of the North Dakota Century Code are amended and reenacted as follows:

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

certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision 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~~ eight 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 10. AMENDMENT. Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

39-20-07. Interpretation of chemical tests. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a

1 combination thereof in the person's blood at the time of the act alleged as shown by a chemical
2 analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

- 3 1. A person having, at that time, an alcohol concentration of not more than five
4 one-hundredths of one percent by weight is presumed not to be under the
5 influence of intoxicating liquor. This presumption has no application to the
6 administration of chapter 39-06.2.
- 7 2. Evidence that there was at that time more than five one-hundredths of one percent
8 by weight alcohol concentration in a person is relevant evidence, but it is not to be
9 given prima facie effect in indicating whether the person was under the influence of
10 intoxicating liquor.
- 11 3. A person having an alcohol concentration of at least ~~ten~~ eight one-hundredths of
12 one percent by weight or, with respect to a person under twenty-one years of age,
13 an alcohol concentration of at least two one-hundredths of one percent by weight
14 at the time of the performance of a chemical test within two hours after driving or
15 being in physical control of a vehicle is under the influence of intoxicating liquor at
16 the time of driving or being in physical control of a vehicle.
- 17 4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of
18 blood or grams of alcohol per two hundred ten liters of alveolar air or grams of
19 alcohol per sixty-seven milliliters of urine.
- 20 5. The results of the chemical analysis must be received in evidence when it is shown
21 that the sample was properly obtained and the test was fairly administered, and if
22 the test is shown to have been performed according to methods and with devices
23 approved by the state toxicologist, and by an individual possessing a certificate of
24 qualification to administer the test issued by the state toxicologist. The state
25 toxicologist is authorized to approve satisfactory devices and methods of chemical
26 analysis and determine the qualifications of individuals to conduct such analysis,
27 and shall issue a certificate to all qualified operators who exhibit the certificate
28 upon demand of the person requested to take the chemical test.
- 29 6. The state toxicologist may appoint, train, certify, and supervise field inspectors of
30 breath testing equipment and its operation, and the inspectors shall report the
31 findings of any inspection to the state toxicologist for appropriate action. Upon

approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the recorder, or designated official, must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the forensic sciences division of the state department of health, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does

1 not call the witness to establish relevant evidence, the court shall order the
2 defendant to pay costs to the witness as provided in section 31-01-16.

3 10. A signed statement from the individual medically qualified to draw the blood
4 sample for testing as set forth in subsection 5 is prima facie evidence that the
5 blood sample was properly drawn and no further foundation for the admission of
6 this evidence may be required.

7 **SECTION 11. AMENDMENT.** Section 39-20-09 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-20-09. Effect of evidence of chemical test.** This chapter does not limit the
10 introduction of any other competent evidence bearing on the question of whether the person
11 was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test
12 results show an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent or,
13 with respect to a person under twenty-one years of age, an alcohol concentration of at least two
14 one-hundredths of one percent by weight, the purpose of such evidence must be limited to the
15 issues of probable cause, whether an arrest was made prior to the administering of the test,
16 and the validity of the test results.