

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

That the Senate recede from its amendments as printed on pages 1038-1041 of the House Journal and pages 885-887 of the Senate Journal and that Engrossed House Bill No. 1439 be amended as follows:

Page 1, line 1, remove "create and enact a new paragraph to subdivision b of subsection 3 of"

Page 1, line 2, remove "section 39-06.1-10; to" and replace "sections" with "section 39-20-04"

Page 1, line 3, remove "39-08-01 and 39-09-02"

Page 1, line 4, remove "speed limits and"

Page 1, line 5, replace "a penalty" with "for a legislative council study"

Page 1, remove lines 7 through 13

Page 1, line 21, replace "sixteen" with "eighteen"

Page 1, line 22, remove ". The director shall waive the"

Page 1, remove line 23

Page 2, remove line 1

Page 2, line 2, remove "vehicle"

Page 2, line 5, remove the second "last"

Page 2, line 6, replace "sixteen" with "eighteen"

Page 2, line 9, remove "last"

Page 2, line 10, replace "sixteen" with "eighteen"

Page 2, line 13, remove "last"

Page 2, line 14, replace "sixteen" with "eighteen"

Page 2, line 17, remove "last"

Page 2, line 18, replace "sixteen" with "eighteen"

Page 2, line 22, remove the second "last"

Page 2, line 23, replace "sixteen" with "eighteen"

Page 2, replace lines 24 through 30 with:

"SECTION 2. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but 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 a 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 driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing 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 or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
 - a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
 - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
 - a. ~~No~~ An administrative hearing is not held under section 39-20-05;
 - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
 - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
 - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~
 - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
 - f. The person has never been convicted under section 39-08-01.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing."

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

Page 6, remove lines 1 through 31

Page 7, remove lines 1 through 31

Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 26

Page 11, line 15, replace "sixteen" with "eighteen"

Page 11, line 16, remove ". The director shall waive the suspension if the alcohol concentration"

Page 11, remove line 17

Page 11, line 18, remove "was not operating a commercial motor vehicle"

Page 11, line 22, replace "sixteen" with "eighteen"

Page 11, line 28, replace "sixteen" with "eighteen"

Page 12, line 1, overstrike the second ", or"

Page 12, overstrike line 2

Page 12, line 3, overstrike "resulted from at least two separate arrests" and remove "with the last violation or"

Page 12, line 4, remove "suspension" and replace "sixteen" with "eighteen"

Page 12, line 11, replace "sixteen" with "eighteen"

Page 12, line 19, replace "sixteen" with "eighteen"

Page 12, after line 20, insert:

"SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE. The legislative council shall consider studying, during the 2003-04 interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly