

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

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"

Page 1, line 3, replace "39-09-02" with "39-20-04"

Page 1, line 4, replace "speed limits and" with "the"

Page 1, remove lines 7 through 13

Page 1, line 20, remove "of at least"

Page 1, line 21, remove "eight one-hundredths of one percent by weight and"

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 17, remove "of at least"

Page 2, line 18, remove "eight one-hundredths of one percent by weight and"

Page 6, line 4, remove the overstrike over "~~ten~~" and remove "eight"

Page 6, line 20, remove "of an infraction if"

Page 6, remove lines 21 and 22

Page 6, line 23, remove "five-year period," and remove "at least"

Page 6, line 24, remove "eleven one-hundredths of one percent by weight and"

Page 6, line 25, remove the overstrike over "~~or second~~" and remove "or if the"

Page 6, remove lines 26 and 27

Page 6, line 30, remove "at least eight"

Page 6, line 31, remove "one-hundredths of one percent by weight and"

Page 7, line 8, after the period insert "A person convicted of violating subdivision b of subsection 1 is conclusively presumed to have an alcohol concentration of at least sixteen one-hundredths of one percent by weight."

Page 7, line 17, remove "if the alcohol concentration was at at least eight"

Page 7, remove line 18

Page 7, line 19, remove "of one percent by weight" and remove "a fine of at least one"

Page 7, line 20, remove "hundred dollars or" and remove "at least eleven"

Page 7, line 21, remove "one-hundredths of one percent by weight and"

Page 7, line 29, remove "at least eight one-hundredths of one"

Page 7, line 30, remove "percent by weight and"

Page 8, line 7, remove "at least eight one-hundredths of one percent by weight and"

Page 9, replace lines 5 through 30 with:

"SECTION 3. 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~~ Five 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 with an alcohol concentration under sixteen one-hundredths of one percent by weight 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 with an alcohol concentration under sixteen one-hundredths

of one percent by weight 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.
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 10, remove lines 1 through 26

Page 11, line 14, remove "of at least eight one-hundredths of"

Page 11, line 15, remove "one percent by weight and"

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"

Renumber accordingly