

Fifty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2099

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to create and enact a new subsection to section 39-06-03.1 and a new
2 subsection to section 39-06-19 of the North Dakota Century Code, relating to the expiration of a
3 nondriver photo identification card for a nonresident alien and the expiration of an operator's
4 license for a nonresident alien; to amend and reenact sections 39-06-30 and 39-06-34,
5 subsection 1 of section 39-06-42, sections 39-16-03.1 and 39-20-01, subsection 2 of section
6 39-20-04, subsection 1 of section 39-20-04.1, and subsection 4 of section 39-20-05 of the North
7 Dakota Century Code, relating to the meaning of the term conviction, time required for a
8 decision after a hearing, driving while license is suspended, when entries on a driving record
9 are confidential, the implied consent advisory for refusal to submit to alcohol test, procedure to
10 negate effect of a refusal, suspension of person under twenty-one years of age for driving with
11 a prohibited alcohol concentration, and admissibility of regularly kept records; and to repeal
12 sections 39-16-30 and 39-16.1-21 of the North Dakota Century Code, relating to driving while a
13 license is suspended.

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

15 **SECTION 1.** A new subsection to section 39-06-03.1 of the North Dakota Century Code
16 is created and enacted as follows:

17 The nondriver photo identification card for an individual who is not a United States
18 citizen or resident alien expires on the date of the expiration of that individual's
19 immigration or other document allowing that individual to be in this country.

20 **SECTION 2.** A new subsection to section 39-06-19 of the North Dakota Century Code
21 is created and enacted as follows:

22 The expiration date of an operator's license for an individual who is not a United
23 States citizen or resident alien is the date of the expiration of that individual's

immigration or other document allowing that individual to be in this country if that is less than four years.

SECTION 3. AMENDMENT. Section 39-06-30 of the North Dakota Century Code is amended and reenacted as follows:

39-06-30. Conviction - Meaning and effect. For purposes of this title the term "conviction" means a final order or judgment of conviction by the North Dakota supreme court or, any lower court having jurisdiction, a tribal court, or a court in another state provided that no appeal is pending and the time for filing a notice of appeal has elapsed. Subject to the filing of an appeal, a conviction includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is deferred under subsection 4 of section 12.1-32-02; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 4. AMENDMENT. Section 39-06-34 of the North Dakota Century Code is amended and reenacted as follows:

39-06-34. Director may require reexamination. In addition to other powers set forth in this chapter, the director, having good cause to believe that a licensed operator is incompetent or otherwise not qualified to be licensed, may upon written notice of at least five days to the licensee require the licensee to submit to such physical, mental, or driver's examination as may be deemed necessary. If the director has good cause to believe that the licensed operator presents an immediate danger to the motoring public, the director may immediately, and without prior notice, suspend the operator's license pending the examination. The notice of suspension must provide the operator with the opportunity for a hearing within five days of the receipt of the notice of suspension. When a hearing is requested it must be conducted under section 39-06-33 and the hearing officer's recommended decision must be rendered within two days of the conclusion of the hearing. Upon the conclusion of such examination the director shall take action as may be appropriate and may suspend or revoke the license of such person or permit the licensee to retain the license, or may issue a license subject to restrictions as permitted under section 39-06-17. Refusal or neglect of the licensee to submit to such examination shall be grounds for suspension or revocation of the license.

1 **SECTION 5. AMENDMENT.** Subsection 1 of section 39-06-42 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. Except as provided in ~~chapters 39-16 and 39-16.1~~ and section 39-06.1-11, any
4 person who drives a motor vehicle on a highway or on public or private areas to
5 which the public has a right of access for vehicular use in this state while that
6 person's license or privilege so to do is suspended or revoked in any jurisdiction is
7 guilty of a class B misdemeanor for the first, second, or third offense within a
8 five-year period. Any subsequent offense within the same five-year period is a
9 class A misdemeanor.

10 **SECTION 6. AMENDMENT.** Section 39-16-03.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **39-16-03.1. Entries on driver record abstract confidential.** Notwithstanding any
13 other provision of this chapter, the following entries on a driver record or abstract are not
14 available to the public, except for statistical purposes, other than by order of a court of
15 competent jurisdiction accompanied by a fee of twenty-five dollars:

- 16 1. An entry more than three years old.
17 2. After the period of suspension ceases, an entry concerning a suspension under
18 subsection 4, 5, 6, or 7 of section 39-06-03 or subsection 2, 5, or 6 of section
19 39-06-32.
20 3. An entry concerning a suspension as the result of a person under twenty-one years
21 of age who has an alcohol concentration of at least two one-hundredths of one
22 percent but under ~~ten~~ eight one-hundredths of one percent by weight within two
23 hours after driving or being in actual physical control of a vehicle.

24 **SECTION 7. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **39-20-01. Implied consent to determine alcohol and drug content of blood.** Any
27 person who operates a motor vehicle on a highway or on public or private areas to which the
28 public has a right of access for vehicular use in this state is deemed to have given consent, and
29 shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood,
30 breath, saliva, or urine for the purpose of determining the alcohol, other drug, or combination
31 thereof, content of the blood. As used in this chapter the word "drug" means any drug or

1 substance or combination of drugs or substances which renders a person incapable of safely
2 driving, and the words "chemical test" or "chemical analysis" mean any test to determine the
3 alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine,
4 approved by the state toxicologist under this chapter. The test or tests must be administered at
5 the direction of a law enforcement officer only after placing the person, except persons
6 mentioned in section 39-20-03, under arrest and informing that person that the person is or will
7 be charged with the offense of driving or being in actual physical control of a vehicle upon the
8 public highways while under the influence of intoxicating liquor, drugs, or a combination thereof.
9 For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or a
10 person under twenty-one years of age satisfies the requirement of an arrest. The law
11 enforcement officer shall also inform the person charged that refusal of the person to submit to
12 the test determined appropriate will result in a revocation for up to ~~three~~ four years of the
13 person's driving privileges. The law enforcement officer shall determine which of the tests is to
14 be used. When a person under the age of eighteen years is taken into custody for violating
15 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to
16 contact the person's parent or legal guardian to explain the cause for the custody. Neither the
17 law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian
18 may be permitted to interfere with the administration of chemical testing requirements under this
19 chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the
20 minor within ten days after the test results are received or within ten days after the minor is
21 taken into custody if the minor refuses to submit to testing. The notice must contain a
22 statement of the test performed and the results of that test; or if the minor refuses to submit to
23 the testing, a statement notifying of that fact. The attempt to contact or the contacting or
24 notification of a parent or legal guardian is not a precondition to the admissibility of chemical
25 test results or the finding of a consent to, or refusal of, chemical testing by the person in
26 custody.

27 **SECTION 8. AMENDMENT.** Subsection 2 of section 39-20-04 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 2. A person's driving privileges are not subject to revocation under subdivision a of
30 subsection 1 if all of the following criteria are met:
31 a. An administrative hearing is not held under section 39-20-05;

- 1 b. The person mails an affidavit to the director within twenty-five days after the
2 temporary operator's permit is issued. The affidavit must state that the
3 person:
4 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or
5 equivalent ordinance within twenty-five days after the temporary
6 operator's permit is issued;
7 (2) Agrees that the person's driving privileges must be suspended as
8 provided under section 39-06.1-10;
9 (3) Acknowledges the right to a section 39-20-05 administrative hearing
10 and section 39-20-06 judicial review and voluntarily and knowingly
11 waives these rights; and
12 (4) Agrees that the person's driving privileges must be revoked as provided
13 under this section without an administrative hearing or judicial review, if
14 the person does not plead guilty within twenty-five days after the
15 temporary operator's permit is issued, or the court does not accept the
16 guilty plea, or the guilty plea is withdrawn;
17 c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance
18 within twenty-five days after the temporary operator's permit is issued;
19 d. The court accepts the person's guilty plea and a notice of that fact is mailed to
20 the director within twenty-five days after the temporary operator's permit is
21 issued;
22 e. A copy of the final order or judgment of conviction evidencing the acceptance
23 of the person's guilty plea is received by the director prior to the return or
24 reinstatement of the person's driving privileges; and
25 f. The person has never been convicted under section 39-08-01 or equivalent
26 ordinance.

27 **SECTION 9. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota
28 Century Code is amended and reenacted as follows:

- 29 1. After the receipt of a person's operator's license, if taken under section 39-20-03.1
30 or 39-20-03.2, and the certified report of a law enforcement officer and if no written
31 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 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 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 and the violation was for an alcohol concentration of at least 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, and under eighteen one-hundredths of one percent by weight.
- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
- c. 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 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 with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.
- d. For two 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 once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance for an alcohol

1 concentration at least eighteen one-hundredths of one percent by weight or if
2 the person's driving record shows that within the five years preceding the date
3 of arrest, the person's operator's license has at least twice previously been
4 suspended, revoked, or issuance denied under this chapter, or for a violation
5 of section 39-08-01 or equivalent ordinance, or any combination thereof, and
6 the suspensions, revocations, or denials resulted from at least two separate
7 arrests with the last violation or suspension for an alcohol concentration of
8 under eighteen one-hundredths of one percent by weight.

- 9 e. For three years if the operator's record shows that within five years preceding
10 the date of the arrest, the person's operator's license has at least twice
11 previously been suspended, revoked, or issuance denied under this chapter,
12 or for a violation of section 39-08-01 or equivalent ordinance, or any
13 combination thereof, and the suspensions, revocations, or denials resulted
14 from at least two separate arrests and the last violation or suspension was for
15 an alcohol concentration of at least eighteen one-hundredths of one percent
16 by weight.

17 **SECTION 10. AMENDMENT.** Subsection 4 of section 39-20-05 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 4. At a hearing under this section, the regularly kept records of the director may be
20 introduced. Those records establish prima facie their contents without further
21 foundation. For purposes of this chapter, the following are deemed regularly kept
22 records of the director: any copy of a certified copy of an analytical report of a
23 blood, urine, or saliva sample received by the director from the state toxicologist or
24 a law enforcement officer, a ~~certified~~ copy of the checklist and test records
25 received by the director from a certified breath test operator, and any copy of a
26 certified copy of a certificate of the state toxicologist relating to approved methods,
27 devices, operators, materials, and checklists used for testing for alcohol
28 concentration received by the director from the state toxicologist, or the recorder,
29 unless the board of county commissioners has designated a different official to
30 maintain the certificate.

- 1 **SECTION 11. REPEAL.** Sections 39-16-30 and 39-16.1-21 of the North Dakota
- 2 Century Code are repealed.