

FIRST ENGROSSMENT  
with House AmendmentsSixtieth  
Legislative Assembly  
of North Dakota

## ENGROSSED SENATE BILL NO. 2375

Introduced by

Senators Stenehjem, Lyson, O'Connell

Representatives Carlson, Kretschmar, S. Meyer

1 A BILL for an Act to amend and reenact sections 39-01-16, 39-02-03.1, 39-06-34, 39-06.1-11,  
2 39-06.2-10.6, 39-06.2-10.7, and 39-06.2-10.8, subsection 1 of section 39-20-03.1, section  
3 39-20-03.2, subsection 1 of section 39-20-04, sections 39-20-05 and 39-20-06, and  
4 subsection 1 of section 54-57-03 of the North Dakota Century Code, relating to the transfer of  
5 administrative hearings from the department of transportation to the office of administrative  
6 hearings; and to provide for transition.

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

8 **SECTION 1. AMENDMENT.** Section 39-01-16 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **39-01-16. Hearing on alleged violations.**

- 11 1. Any person having information that a licensed dealer has violated any provisions of  
12 this title may file with the director an affidavit specifically ~~setting forth such~~ stating  
13 the facts of the violation. Upon receipt of ~~such the~~ affidavit, the director shall  
14 investigate the violation alleged in the affidavit. If, after investigation, the director  
15 determines that the dealer's license will be revoked or suspended, a notice of  
16 intent to revoke or suspend the license must be mailed to the dealer by certified  
17 mail. The notice must provide the dealer with an opportunity for a hearing ~~prior to~~  
18 before the effective date of the license revocation or suspension. A record of ~~such~~  
19 ~~hearings~~ the hearing must be made by stenographic notes or use of an electronic  
20 recording device.
- 21 2. If after ~~such the~~ hearing the ~~director~~ administrative law judge finds the violation  
22 charged in the affidavit has been proved by the evidence, an order must be served  
23 on the licensee revoking or suspending the dealer's license for a period of time to  
24 be determined by the director. ~~Such~~ The action may be appealed to the district

1 court by following the appeal procedure set forth in chapter 28-32, except that the  
2 order revoking or suspending the license is ineffective while the appeal is pending.

3 ~~The director has the power to appoint an administrative hearing officer to conduct the~~  
4 ~~hearing, administer oaths, and subpoena and examine witnesses. The administrative hearing~~  
5 ~~officer shall submit the findings to the director for consideration and final decision.~~

6 3. Any witness called by the prosecution, except a peace officer while on duty, shall  
7 must receive the same fees and mileage as a witness in a civil case in district  
8 court.

9 **SECTION 2. AMENDMENT.** Section 39-02-03.1 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **39-02-03.1. Director to provide notice and opportunity for hearing ~~prior to~~ before**  
12 **cancellation, revocation, suspension, or rescision of a motor vehicle registration or a**  
13 **certificate of title to a motor vehicle.** ~~Whenever, under~~ Under the laws pertaining to the  
14 cancellation, revocation, suspension, or rescision of a registration of a motor vehicle or a  
15 certificate of title to a motor vehicle, if a determination has been made to cancel, revoke,  
16 suspend, or rescind either the registration or certificate of title, or both, the director shall provide  
17 the legal and registered owner with notice of ~~such~~ the cancellation, revocation, suspension, or  
18 rescision and the opportunity for a hearing. ~~Such~~ The notice must be sent by registered or  
19 certified mail, return receipt requested, not less than ten days ~~prior to~~ before the effective date  
20 of the cancellation, revocation, suspension, or rescision.

21 **SECTION 3. AMENDMENT.** Section 39-06-34 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **39-06-34. Director may require reexamination.** In addition to other powers set forth  
24 in this chapter, the director, having good cause to believe that a licensed operator is  
25 incompetent or otherwise not qualified to be licensed, may upon written notice of at least five  
26 days to the licensee require the licensee to submit to such physical, mental, or driver's  
27 examination as may be deemed necessary. If the director has good cause to believe that the  
28 licensed operator presents an immediate danger to the motoring public, the director may  
29 immediately, and without prior notice, suspend the operator's license pending the examination.  
30 The notice of suspension must provide the operator with the opportunity for a hearing within  
31 five days of the receipt of the notice of suspension. When a hearing is requested it must be

1 conducted under section 39-06-33 and the ~~hearing officer's~~ administrative law judge's  
2 recommended decision must be rendered within two days of the conclusion of the hearing.  
3 Upon the conclusion of such examination the director shall take action as may be appropriate  
4 and may suspend or revoke the license of such person or permit the licensee to retain the  
5 license, or may issue a license subject to restrictions as permitted under section 39-06-17.  
6 Refusal or neglect of the licensee to submit to such examination shall be grounds for  
7 suspension or revocation of the license.

8 **SECTION 4. AMENDMENT.** Section 39-06.1-11 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10 **39-06.1-11. Temporary restricted license - Ignition interlock device.**

- 11 1. Except as provided under subsection 2, if the director has suspended a license  
12 under section 39-06.1-10 or has extended a suspension or revocation under  
13 section 39-06-43, upon receiving written application from the offender affected, the  
14 director may for good cause issue a temporary restricted operator's license valid  
15 for the remainder of the suspension period after seven days of the suspension  
16 period have passed.
- 17 2. If the director has suspended a license under chapter 39-20, or after a violation of  
18 section 39-08-01 or equivalent ordinance, upon written application of the offender  
19 the director may issue for good cause a temporary restricted license that takes  
20 effect after thirty days of the suspension have been served after a first offense  
21 under section 39-08-01 or chapter 39-20. The director may not issue a temporary  
22 restricted license to any offender whose operator's license has been revoked  
23 under section 39-20-04 or suspended upon a second or subsequent offense under  
24 section 39-08-01 or chapter 39-20, except that a temporary restricted license may  
25 be issued for good cause if the offender has not committed an offense for a period  
26 of two years before the date of the filing of a written application that must be  
27 accompanied by a report from an addiction facility or if the offender is participating  
28 in the drug court program and has not committed an offense for a period of three  
29 hundred sixty-five days before the date of the filing of a written application that  
30 must be accompanied by a recommendation from the district court. The director  
31 may ~~conduct~~ request a hearing for the purposes of obtaining information, reports,

and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.

3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

**SECTION 5. AMENDMENT.** Section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-10.6. Administrative hearing on request.**

1. Before issuing an order of suspension, revocation, or disqualification under section 39-06.2-10, the director shall afford that person an opportunity for a hearing as provided by section 39-20-05, if the person mails a request for the hearing to the director within ten days after the date of issuance of the temporary driver's permit.
2. If the issue to be determined by the hearing concerns license suspension for operating a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight, the hearing must be before a ~~hearing officer assigned by the director~~ an administrative law judge and at a time and place designated by the director of the office of administrative hearings. 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 commercial motor vehicle in violation of section 39-06.2-10.1, whether the person was lawfully detained, whether the person was tested in accordance with section 39-06.2-10.2, and whether the test results show the person had an alcohol concentration of at least four one-hundredths of one

1           percent by weight. For purposes of this section, a copy of a certified copy of an  
2           analytical report of a blood or urine sample from the office of the director of the  
3           state crime laboratory or the director's designee, or a certified copy of the checklist  
4           and test records from a certified breath test operator establish prima facie the  
5           alcohol concentration shown therein. Whether the person was warned that the  
6           privilege to drive might be suspended based on the results of the test is not an  
7           issue.

- 8           3. If the issue to be determined by the hearing concerns license revocation for  
9           refusing to submit to a test under section 39-06.2-10.2, the hearing must be before  
10          ~~a hearing officer assigned by the director~~ an administrative law judge at a time and  
11          place designated by the director of the office of administrative hearings. The  
12          hearing must be recorded. The scope of a hearing for refusing to submit to a test  
13          under section 39-06.2-10.2 may cover only the issues of whether a law  
14          enforcement officer had reasonable grounds to believe the person had been  
15          driving or was in actual physical control of a commercial motor vehicle in violation  
16          of section 39-06.2-10.1, whether the person was lawfully detained, and whether  
17          that person refused to submit to the test or tests. The scope of a hearing for  
18          refusing to submit to a test under subsection 3 of section 39-06.2-10.4 may cover  
19          only the issues of whether the law enforcement officer had reason to believe the  
20          person committed a moving traffic violation or was involved in a traffic accident as  
21          a driver, whether in conjunction with the violation or the accident the officer has,  
22          through the officer's observations, formulated an opinion that the person's body  
23          contains alcohol and, whether the person refused to submit to the onsite screening  
24          test. Whether the person was warned that the privilege to drive would be revoked  
25          or denied for refusal to submit to the test or tests is not an issue.

- 26          4. At a hearing under this section, the regularly kept records of the director may be  
27          introduced. Those records establish prima facie their contents without further  
28          foundation. For purposes of this chapter, the following are deemed regularly kept  
29          records of the director: any copy of a certified copy of an analytical report of a  
30          blood or urine sample received by the director from the director of the state crime  
31          laboratory or the director's designee or a law enforcement officer, a certified copy

of the checklist and test records received by the director from a certified breath test operator, and any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate.

5. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify the person of the ~~hearing officer's~~ administrative law judge'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~~ administrative law judge 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~~ administrative law judge finds, based on a preponderance of the evidence, that the person refused a test under section 39-06.2-10.2 or that the person had an alcohol concentration of at least four one-hundredths of one percent by weight, the ~~hearing officer shall~~ administrative law judge immediately shall take possession of the person's temporary driver's permit issued under this chapter. If the ~~hearing officer~~ administrative law judge does not find against the person, the ~~hearing officer~~ administrative law judge 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~~ administrative law judge shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the ~~hearing officer~~ administrative law judge has determined in favor of the person, the director shall return the person's commercial driver's license by regular mail to the address on file with the director under section 39-06.2-08.
6. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the ~~hearing officer's~~ administrative law judge's determination on license revocation,

suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available. On the date for which the hearing is scheduled, the ~~hearing officer~~ administrative law judge shall mail to the person, by regular mail, at the address on file with the director under section 39-06-20, or at any other address for the person or the person's legal representative supplied in the request for hearing, a copy of the decision which serves as the director's official notification to the person of the revocation, suspension, or denial of driving privileges in this state. Even if the person for whom the hearing is scheduled fails to appear at the hearing, the hearing is deemed to have been held on the date for which it is scheduled for purposes of appeal under section 39-06.2-10.7.

7. An administrative law judge assigned by the director of the office of administrative hearings to conduct a hearing under this section shall maintain and secure all related documents and evidence to maintain the privacy of records that have been affirmed which contain personal information.

**SECTION 6. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-10.7. Judicial review.** ~~Any person whose commercial driver's license or privilege has been suspended, revoked, or denied by~~ party adversely affected by the decision of the ~~hearing officer~~ administrative law judge under section 39-06.2-10.6 may appeal within seven days after the date of the hearing under section 39-06.2-10.6 as shown by the date of the ~~hearing officer's~~ administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice of appeal and specifications of error in the district court in the county where the events occurred for which the demand for a test was made, or in the county in which the administrative hearing was held. The court shall set the matter for hearing, and the petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer who rendered the decision. Neither the director nor the~~ The court may not stay the decision pending decision on appeal. Within twenty days after receipt of the notice of appeal, the director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not

1 ~~hear~~ additional evidence ~~may be heard~~. The court shall affirm the decision of the ~~director or~~  
2 ~~hearing officer~~ administrative law judge unless ~~it~~ the court finds the evidence insufficient to  
3 warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The  
4 court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law  
5 judge for rehearing and the presentation of additional evidence.

6 **SECTION 7. AMENDMENT.** Section 39-06.2-10.8 of the North Dakota Century Code  
7 is amended and reenacted as follows:

8 **39-06.2-10.8. Temporary driver's permit.** A temporary driver's permit extends driving  
9 privileges for twenty-five days, unless earlier terminated by the decision of ~~a hearing officer~~ an  
10 administrative law judge under section 39-06.2-10.6. The law enforcement officer must sign  
11 and note the date of issuance on the temporary driver's permit. The temporary driver's permit  
12 serves as the director's official notification to the driver of the director's intent to revoke,  
13 suspend, or deny driving privileges in this state. ~~No~~ A temporary driver's permit may not be  
14 issued for the period covered by an out-of-service order.

15 **SECTION 8. AMENDMENT.** Subsection 1 of section 39-20-03.1 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 1. The law enforcement officer shall immediately take possession of the person's  
18 operator's license if it is then available and shall immediately issue to that person a  
19 temporary operator's permit if the person then has valid operating privileges,  
20 extending driving privileges for the next twenty-five days, or until earlier terminated  
21 by the decision of ~~a hearing officer~~ an administrative law judge under section  
22 39-20-05. The law enforcement officer shall sign and note the date on the  
23 temporary operator's permit. The temporary operator's permit serves as the  
24 director's official notification to the person of the director's intent to revoke,  
25 suspend, or deny driving privileges in this state.

26 **SECTION 9. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28 **39-20-03.2. Action following test result or on refusing test by nonresident**  
29 **operator.** If a person licensed in another state refuses in this state to submit to a test provided  
30 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,  
31 or 39-20-03 and the test results show the person to have an alcohol concentration of at least



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

- 5 1. Without taking possession of the person's out-of-state operator's license, the law  
6 enforcement officer shall issue to the person a notification of the test results and a  
7 temporary operator's permit extending nonresident operating privileges in this state  
8 for twenty-five days from the date of issuance or until earlier terminated by the  
9 decision of ~~a hearing officer~~ an administrative law judge under section 39-20-05.  
10 The temporary permit must be signed and dated by the officer and serves as the  
11 director's official notification to the person of the director's intent to revoke,  
12 suspend, or deny driving privileges in this state, and of the hearing procedures  
13 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 eight one-hundredths of one  
17 percent by weight or, with respect to a person under twenty-one years of age, an  
18 alcohol concentration of at least two one-hundredths of one percent by weight,  
19 shall mail or issue to the person a notification of the test results, a temporary  
20 operator's permit extending nonresident operating privileges in this state for  
21 twenty-five days from the date of mailing or issuance or until earlier terminated by  
22 the decision of ~~a hearing officer~~ an administrative law judge under section  
23 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in  
24 this state, together with the notice provided under section 39-06.1-07 of the  
25 procedures available under this chapter. The temporary operator's permit must be  
26 signed and dated by the officer.
- 27 3. The law enforcement officer, within five days of issuing the temporary operator's  
28 permit, shall forward to the director a certified written report in the form required by  
29 the director and a certified copy of the operational checklist and test records of a  
30 breath test and a copy of the certified copy of the analytical report for a blood,  
31 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 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 10. AMENDMENT.** Subsection 1 of section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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~~ an administrative law judge 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. 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. 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 of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

1           **SECTION 11. AMENDMENT.** Section 39-20-05 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **39-20-05. Administrative hearing on request.**

- 4           1. Before issuing an order of suspension, revocation, or denial under section  
5 39-20-04 or 39-20-04.1, the director shall afford that person an opportunity for a  
6 hearing if the person mails or communicates by other means authorized by the  
7 director a request for the hearing to the director within ten days after the date of  
8 issuance of the temporary operator's permit. The hearing must be held within thirty  
9 days after the date of issuance of the temporary operator's permit. If ~~no~~ a hearing  
10 is not requested within the time limits in this section, and ~~no~~ an affidavit is not  
11 submitted within the time limits under subsection 2 of section 39-20-04, the  
12 expiration of the temporary operator's permit serves as the director's official  
13 notification to the person of the revocation, suspension, or denial of driving  
14 privileges in this state.
- 15          2. If the issue to be determined by the hearing concerns license suspension for  
16 operating a motor vehicle while having an alcohol concentration of at least eight  
17 one-hundredths of one percent by weight or, with respect to a person under  
18 twenty-one years of age, an alcohol concentration of at least two one-hundredths  
19 of one percent by weight, the hearing must be before ~~a hearing officer assigned by~~  
20 ~~the director~~ an administrative law judge and at a time and place designated by the  
21 director of the office of administrative hearings. The hearing must be recorded and  
22 its scope may cover only the issues of whether the arresting officer had reasonable  
23 grounds to believe the person had been driving or was in actual physical control of  
24 a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to  
25 a person under twenty-one years of age, the person had been driving or was in  
26 actual physical control of a vehicle while having an alcohol concentration of at least  
27 two one-hundredths of one percent by weight; whether the person was placed  
28 under arrest, unless the person was under twenty-one years of age and the  
29 alcohol concentration was less than eight one-hundredths of one percent by  
30 weight, then arrest is not required and is not an issue under any provision of this  
31 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 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 director of the state crime laboratory or the director's designee 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.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing must be before ~~a hearing officer assigned by the director~~ an administrative law judge at a time and place designated by the director of the office of administrative hearings. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement 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; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

- 1           4. At a hearing under this section, the regularly kept records of the director may be  
2 introduced. Those records establish prima facie their contents without further  
3 foundation. For purposes of this chapter, the following are deemed regularly kept  
4 records of the director: any copy of a certified copy of an analytical report of a  
5 blood, urine, or saliva sample received by the director from the director of the state  
6 crime laboratory or the director's designee or a law enforcement officer, a certified  
7 copy of the checklist and test records received by the director from a certified  
8 breath test operator, and any copy of a certified copy of a certificate of the director  
9 of the state crime laboratory or the director's designee relating to approved  
10 methods, devices, operators, materials, and checklists used for testing for alcohol  
11 concentration received by the director from the director of the state crime  
12 laboratory, the director's designee, or the recorder, unless the board of county  
13 commissioners has designated a different official to maintain the certificate.
- 14           5. At a hearing under this section, the administrative law judge may introduce  
15 records, conduct examinations, and present evidence relating to the issues to be  
16 determined at the hearing. The department may be represented by legal counsel  
17 at any hearing under this section.
- 18           6. At the close of the hearing, the ~~hearing officer~~ administrative law judge shall notify  
19 the person of the ~~hearing officer's~~ administrative law judge's findings of fact,  
20 conclusions of law, and decision based on the findings and conclusions and shall  
21 immediately deliver to the person a copy of the decision. If the ~~hearing officer~~  
22 administrative law judge does not find in favor of the person, the copy of the  
23 decision serves as the director's official notification to the person of the revocation,  
24 suspension, or denial of driving privileges in this state. If the ~~hearing officer~~  
25 administrative law judge finds, based on a preponderance of the evidence, that the  
26 person refused a test under section 39-20-01 or 39-20-14 or that the person had  
27 an alcohol concentration of at least eight one-hundredths of one percent by weight  
28 or, with respect to a person under twenty-one years of age, an alcohol  
29 concentration of at least two one-hundredths of one percent by weight, the ~~hearing~~  
30 ~~officer shall~~ administrative law judge immediately shall take possession of the  
31 person's temporary operator's permit issued under this chapter. If the ~~hearing~~

1 ~~officer~~ administrative law judge does not find against the person, the ~~hearing~~  
2 ~~officer~~ administrative law judge shall sign, date, and mark on the person's permit  
3 an extension of driving privileges for the next twenty days and shall return the  
4 permit to the person. The ~~hearing-officer~~ administrative law judge shall report the  
5 findings, conclusions, and decisions to the director within ten days of the  
6 conclusion of the hearing. If the ~~hearing-officer~~ administrative law judge has  
7 determined in favor of the person, the director shall return the person's operator's  
8 license by regular mail to the address on file with the director under section  
9 39-06-20.

10 6- 7. If the person who requested a hearing under this section fails to appear at the  
11 hearing without justification, the right to the hearing is waived, and the ~~hearing~~  
12 ~~officer's~~ administrative law judge's determination on license revocation,  
13 suspension, or denial will be based on the written request for hearing, law  
14 enforcement officer's report, and other evidence as may be available. The ~~hearing~~  
15 ~~officer-shall~~ administrative law judge, on the date for which the hearing is  
16 scheduled, shall mail to the person, by regular mail, at the address on file with the  
17 director under section 39-06-20, or at any other address for the person or the  
18 person's legal representative supplied in the request for hearing, a copy of the  
19 decision which serves as the director's official notification to the person of the  
20 revocation, suspension, or denial of driving privileges in this state. Even if the  
21 person for whom the hearing is scheduled fails to appear at the hearing, the  
22 hearing is deemed to have been held on the date for which it is scheduled for  
23 purposes of appeal under section 39-20-06.

24 **SECTION 12. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **39-20-06. Judicial review.** Any ~~person whose operator's license or privilege has been~~  
27 ~~suspended, revoked, or denied by~~ party adversely affected by the decision of the ~~hearing~~  
28 ~~officer~~ administrative law judge under section 39-20-05 may appeal within seven days after the  
29 date of the hearing under section 39-20-05 as shown by the date of the ~~hearing-officer's~~  
30 administrative law judge's decision, section 28-32-42 notwithstanding, by serving on the  
31 director and filing a notice of appeal and specifications of error in the district court in the county

1 where the events occurred for which the demand for a test was made, or in the county in which  
2 the administrative hearing was held. The court shall set the matter for hearing, and the  
3 petitioner shall give twenty days' notice of the hearing to the director ~~and to the hearing officer~~  
4 ~~who rendered the decision. Neither the director nor the.~~ The court may not stay the decision  
5 pending decision on appeal. Within twenty days after receipt of the notice of appeal, the  
6 director ~~or the hearing officer who rendered the decision~~ shall file in the office of the clerk of  
7 court to which the appeal is taken a certified transcript of the testimony and all other  
8 proceedings. It is the record on which the appeal must be determined. ~~No~~ The court may not  
9 hear additional evidence ~~may be heard.~~ The court shall affirm the decision of the ~~director or~~  
10 ~~hearing officer~~ administrative law judge unless ~~it~~ the court finds the evidence insufficient to  
11 warrant the conclusion reached by the ~~director or hearing officer~~ administrative law judge. The  
12 court may direct that the matter be returned to the ~~director or hearing officer~~ administrative law  
13 judge for rehearing and the presentation of additional evidence.

14 **SECTION 13. AMENDMENT.** Subsection 1 of section 54-57-03 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or  
17 other persons to preside in an administrative proceeding, all adjudicative  
18 proceedings of administrative agencies under chapter 28-32, except those of the  
19 public service commission, the industrial commission, the insurance commissioner,  
20 workforce safety and insurance, the state engineer, ~~the department of~~  
21 ~~transportation~~, job service North Dakota, and the labor commissioner, must be  
22 conducted by the office of administrative hearings in accordance with the  
23 adjudicative proceedings provisions of chapter 28-32 and any rules adopted  
24 pursuant to chapter 28-32. ~~But, appeals~~ Appeals hearings pursuant to section  
25 61-03-22 and drainage appeals from water resource boards to the state engineer  
26 pursuant to chapter 61-32 must be conducted by the office of administrative  
27 hearings. ~~Additionally, hearings~~ Hearings of the department of corrections and  
28 rehabilitation for the parole board in accordance with chapter 12-59; regarding  
29 parole violations; job discipline and dismissal appeals to the board of higher  
30 education; Individuals With Disabilities Education Act and section 504 due process  
31 hearings of the superintendent of public instruction; and chapter 37-19.1 veterans'



1 preferences hearings for any agency must be conducted by the office of  
2 administrative hearings in accordance with applicable laws.

3 **SECTION 14. TRANSITION.** All full-time department of transportation hearing officer  
4 employees who currently conduct hearings for the department of transportation are transferred  
5 to and become employees of the office of administrative hearings.