

Sixty-fourth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1424

Introduced by

Representatives Haak, Delmore

1 A BILL for an Act to amend and reenact section 39-06-33, subsection 2 of section 39-06-37,
2 subsection 6 of section 39-06.2-10.6, subsection 3 of section 39-20-03.1, subsection 2 of
3 section 39-20-03.2, and subsection 6 of section 39-20-05 of the North Dakota Century Code,
4 relating to certified mail for driver's license notifications.

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

6 **SECTION 1. AMENDMENT.** Section 39-06-33 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-06-33. Hearings on suspension or revocation.**

- 9 1. If an operator's license is suspended or revoked under section 39-06-32 or 39-06.1-10
10 or chapter 39-16 or 39-16.1, the director shall give notice of intention to suspend to the
11 licensee by mailing the notice to the licensee at the address of record in the
12 department under section 39-06-20. Actual notice of the opportunity for a hearing
13 under this section must be deemed to have occurred seventy-two hours after the
14 notice is mailed by ~~regular~~certified mail. The licensee has ten days after the date of
15 mailing of the notice to request, in writing or by other means authorized by the director,
16 a hearing on the intended suspension or revocation.
- 17 2. Any hearing conducted under this section and any appeal from the decision of the
18 hearing must be conducted under chapter 28-32, except the hearing must be heard
19 within sixty days of the receipt of the request for hearing and in the county of the
20 licensee's residence, unless the parties agree to a different time and place for the
21 hearing. At the hearing, the regularly kept records of the director may be introduced
22 and are prima facie evidence of their content without further foundation.

3. The mailing of the decision and the resulting order by ~~regular~~certified mail to the address recorded in the files of the director under section 39-06-20 is sufficient notice. If a suspension is ordered, a reexamination of the licensee may be required.

4. If a suspension is ordered under subdivision b of subsection 1 of section 39-06-32, the notice must include a specific description of the conditions which led to the conclusion that the licensee is incompetent to drive a motor vehicle. If during the suspension those conditions dissipate, the licensee may request another hearing on the issue of competence to drive a motor vehicle. The hearing must be held in the manner required under subsections 2 and 3 for the original suspension.

SECTION 2. AMENDMENT. Subsection 2 of section 39-06-37 of the North Dakota Century Code is amended and reenacted as follows:

2. A suspension, revocation, or cancellation ordered under this title must be deemed to have commenced when the order is delivered to the licensee at the address of record in the department under section 39-06-20. Constructive delivery under this section must be considered as occurring forty-eight hours after the order is mailed to the person by ~~regular~~certified mail.

SECTION 3. AMENDMENT. Subsection 6 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

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 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 shall mail to the person, by ~~regular~~certified 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.

1 **SECTION 4. AMENDMENT.** Subsection 3 of section 39-20-03.1 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 3. If the test results indicate an alcohol concentration at or above the legal limit, the law
4 enforcement agency making the arrest may mail a temporary operator's permit to the
5 individual who submitted to the blood or urine test, whether or not the individual is a
6 resident of the area in which the law enforcement officer has jurisdiction. The third day
7 after the mailing of the temporary operator's permit is considered the date of issuance.
8 Actual notice of the opportunity for a hearing under this section is deemed to have
9 occurred seventy-two hours after the notice is mailed by ~~regular~~certified mail to the
10 address submitted by the individual to the law enforcement officer. The temporary
11 operator's permit serves as the director's official notification to the individual of the
12 director's intent to revoke, suspend, or deny driving privileges in this state.

13 **SECTION 5. AMENDMENT.** Subsection 2 of section 39-20-03.2 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 2. If the test was administered by urine sample or by drawing blood, the law enforcement
16 officer, on reviewing the alcohol concentration analysis showing the individual had an
17 alcohol concentration of at least eight one-hundredths of one percent by weight or,
18 with respect to an individual under twenty-one years of age, an alcohol concentration
19 of at least two one-hundredths of one percent by weight, shall mail by certified mail or
20 issue to the individual a notification of the test results, a temporary operator's permit
21 extending nonresident operating privileges in this state for twenty-five days from the
22 date of mailing or issuance or until earlier terminated by the decision of a hearing
23 officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny
24 driving privileges in this state, together with the notice provided under section
25 39-06.1-07 of the procedures available under this chapter. The temporary operator's
26 permit must be signed and dated by the officer. The third day after the mailing of the
27 temporary operator's permit is considered the date of issuance.

28 **SECTION 6. AMENDMENT.** Subsection 6 of section 39-20-05 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 6. If the person who requested a hearing under this section fails to appear at the hearing
31 without justification, the right to the hearing is waived, and the hearing officer's

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