

**Fifty-eighth Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 7, 2003**

HOUSE BILL NO. 1439  
(Representative Weiler)  
(Senator Nething)

AN ACT to amend and reenact subsection 7 of section 39-06.1-10, section 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to consequences for driving while under the influence; and to provide for a legislative council study.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
  - b. 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 violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
  - d. Two years if the operator's record shows the person has at least ~~twice~~ once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
  - e. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

**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.

**SECTION 3. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written 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 ten 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 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.
  - e. 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 ~~at least twice previously~~ once 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, and the suspensions, revocations, or denials resulted from at least two separate arrests~~ for an alcohol concentration at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, 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, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
  - e. For three years if the operator's record shows that within five years preceding the date of the arrest, 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, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

**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.

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Speaker of the House

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President of the Senate

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Chief Clerk of the House

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Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1439.

House Vote:      Yeas    68      Nays    20      Absent    6

Senate Vote:    Yeas    31      Nays    15      Absent    1

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Chief Clerk of the House

Received by the Governor at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

Approved at \_\_\_\_\_ M. on \_\_\_\_\_, 2003.

\_\_\_\_\_  
Governor

Filed in this office this \_\_\_\_\_ day of \_\_\_\_\_, 2003,  
at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

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Secretary of State