

HOUSE BILL NO. 1161

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to amend and reenact section 39-06-32, subsection 1 of section 39-08-01,
2 sections 39-20-03.1 and 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2 and 5 of
3 section 39-20-05, and sections 39-20-07 and 39-20-09 of the North Dakota Century Code,
4 relating to the level of alcohol concentration prohibited for motor vehicle operators.

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

6 **SECTION 1. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-06-32. Authority to suspend licenses.** The director may suspend the license of
9 an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the
10 following apply to the licensee:

- 11 1. Commission of an offense for which mandatory revocation of license is required
12 upon conviction.
- 13 2. Incompetence to drive a motor vehicle.
- 14 3. Unlawful or fraudulent use of an operator's license.
- 15 4. Refusal to submit to an implied consent chemical test on an Indian reservation or in
16 another state. For purposes of this subsection, the specific requirements for
17 establishing a refusal used on the Indian reservation or in the other state may not
18 be considered, and photostatic copies of the records of the other jurisdiction's
19 drivers licensing authority are sufficient evidence of the refusal whether or not
20 those copies are certified. The suspension must be for the same length of time as
21 the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a
22 person while operating a commercial motor vehicle, the period of suspension must
23 be the same as the period of revocation provided in section 39-06.2-10.

- 1 5. Failure, as shown by the certificate of the court, to pay a fine or serve any other
2 sentence as ordered by a court upon conviction for any criminal traffic offense.
- 3 6. Failure, as shown by the certificate of the court, to appear in court or post and
4 forfeit bond after signing a promise to appear, if signing is required by law, in
5 violation of section 39-06.1-04, willful violation of a written promise to appear in
6 court, in violation of section 39-07-08, or violation of equivalent ordinances or laws
7 in another jurisdiction. Upon resolution by the operator of the underlying cause for
8 a suspension under this subsection, as shown by the certificate of the court, the
9 director shall record the suspension separately on the driving record. This
10 separate record is not available to the public.
- 11 7. An administrative decision on an Indian reservation or in another state that the
12 licensee's privilege to drive on that Indian reservation or in that state is suspended
13 or revoked because of a violation of that Indian reservation's or state's law
14 forbidding motor vehicle operation with an alcohol concentration of at least ~~ten~~
15 eight one-hundredths of one percent by weight or, with respect to a person under
16 twenty-one years of age, an alcohol concentration of at least two one-hundredths
17 of one percent by weight, or because of a violation of that Indian reservation's or
18 state's law forbidding the driving or being in actual physical control of a commercial
19 motor vehicle while having an alcohol concentration of at least four one-hundredths
20 of one percent by weight. The specific requirements for establishing the violation
21 on the Indian reservation or in the other state may not be considered and certified
22 copies of the records of the Indian reservation's or other state's drivers licensing
23 authority are sufficient evidence of the violation. The suspension must be for the
24 same duration as the suspension in section 39-20-04.1, if the violation does not
25 involve a commercial motor vehicle. If the violation involves a commercial motor
26 vehicle, the period of suspension must be the same as the period of suspension
27 provided in section 39-06.2-10.
- 28 8. Conviction of an offense under this title and it appears from the director's records
29 that the offense contributed to causing an accident which resulted in death or
30 serious personal injury or serious property damage. No suspension may be

1 imposed if the person has been sanctioned for the same offense under section
2 39-06-31.

3 **SECTION 2. AMENDMENT.** Subsection 1 of section 39-08-01 of the North Dakota
4 Century Code, as effective after July 31, 2003, is amended and reenacted as follows:

- 5 1. A person may not drive or be in actual physical control of any vehicle upon a
6 highway or upon public or private areas to which the public has a right of access
7 for vehicular use in this state if any of the following apply:
- 8 a. That person has an alcohol concentration of at least ~~ten~~ eight one-hundredths
9 of one percent by weight at the time of the performance of a chemical test
10 within two hours after the driving or being in actual physical control of a
11 vehicle.
 - 12 b. That person is under the influence of intoxicating liquor.
 - 13 c. That person is under the influence of any drug or substance or combination of
14 drugs or substances to a degree which renders that person incapable of
15 safely driving.
 - 16 d. That person is under the combined influence of alcohol and any other drugs
17 or substances to a degree which renders that person incapable of safely
18 driving.

19 The fact that any person charged with violating this section is or has been legally
20 entitled to use alcohol or other drugs or substances is not a defense against any
21 charge for violating this section, unless a drug which predominately caused
22 impairment was used only as directed or cautioned by a practitioner who legally
23 prescribed or dispensed the drug to that person.

24 **SECTION 3. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
25 amended and reenacted as follows:

26 **39-20-03.1. Action following test result for a resident operator.** If a person submits
27 to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have
28 an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with
29 respect to a person under twenty-one years of age, an alcohol concentration of at least two
30 one-hundredths of one percent by weight at the time of the performance of a chemical test

1 within two hours after the driving or being in actual physical control of a vehicle, the following
2 procedures apply:

- 3 1. The law enforcement officer shall immediately take possession of the person's
4 operator's license if it is then available and shall immediately issue to that person a
5 temporary operator's permit if the person then has valid operating privileges,
6 extending driving privileges for the next twenty-five days, or until earlier terminated
7 by the decision of a hearing officer under section 39-20-05. The law enforcement
8 officer shall sign and note the date on the temporary operator's permit. The
9 temporary operator's permit serves as the director's official notification to the
10 person of the director's intent to revoke, suspend, or deny driving privileges in this
11 state.
- 12 2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine
13 sample or by drawing blood as provided in section 39-20-02 and the person tested
14 is not a resident of an area in which the law enforcement officer has jurisdiction,
15 the law enforcement officer shall, on receiving the analysis of the saliva, urine, or
16 blood from the state toxicologist and if the analysis shows that person had an
17 alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight
18 or, with respect to a person under twenty-one years of age, an alcohol
19 concentration of at least two one-hundredths of one percent by weight, either
20 proceed in accordance with subsection 1 during that person's reappearance within
21 the officer's jurisdiction or notify a law enforcement agency having jurisdiction
22 where the person lives. On that notification, that law enforcement agency shall
23 immediately take possession of the person's North Dakota operator's license or
24 permit if it is then available and, within twenty-four hours, forward the license and a
25 copy of the temporary operator's permit to the law enforcement agency making the
26 arrest or to the director. The law enforcement agency shall also, on taking
27 possession of the person's operator's license, issue to that person a temporary
28 operator's permit as provided in this section, and shall sign and date the permit as
29 provided in subsection 1. The temporary operator's permit serves as the director's
30 official notification to the person of the director's intent to revoke, suspend, or deny
31 driving privileges in this state.

1 3. The law enforcement officer, within five days of the issuance of the temporary
2 operator's permit, shall forward to the director a certified written report in the form
3 required by the director and the person's operator's license taken under subsection
4 1 or 2. If the person was issued a temporary operator's permit because of the
5 results of a test, the report must show that the officer had reasonable grounds to
6 believe the person had been driving or was in actual physical control of a motor
7 vehicle while in violation of section 39-08-01, or equivalent ordinance, that the
8 person was lawfully arrested, that the person was tested for alcohol concentration
9 under this chapter, and that the results of the test show that the person had an
10 alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight
11 or, with respect to a person under twenty-one years of age, an alcohol
12 concentration of at least two one-hundredths of one percent by weight. In addition
13 to the operator's license and report, the law enforcement officer shall forward to the
14 director a certified copy of the operational checklist and test records of a breath
15 test and a copy of the certified copy of the analytical report for a blood, saliva, or
16 urine test for all tests administered at the direction of the officer.

17 **SECTION 4. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-03.2. Action following test result or on refusing test by nonresident**
20 **operator.** If a person licensed in another state refuses in this state to submit to a test provided
21 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,
22 or 39-20-03 and the test results show the person to have an alcohol concentration of at least
23 ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under
24 twenty-one years of age, an alcohol concentration of at least two one-hundredths of one
25 percent by weight at the time of performance of a test within two hours after driving or being in
26 physical control of a motor vehicle, the following procedures apply:

27 1. Without taking possession of the person's out-of-state operator's license, the law
28 enforcement officer shall issue to the person a notification of the test results and a
29 temporary operator's permit extending nonresident operating privileges in this state
30 for twenty-five days from the date of issuance or until earlier terminated by the
31 decision of a hearing officer under section 39-20-05. The temporary permit must

- 1 be signed and dated by the officer and serves as the director's official notification
2 to the person of the director's intent to revoke, suspend, or deny driving privileges
3 in this state, and of the hearing procedures under this chapter.
- 4 2. If the test was administered by saliva or urine sample or by drawing blood, the law
5 enforcement officer, on reviewing the alcohol concentration analysis showing the
6 person had an alcohol concentration of at least ~~ten~~ eight one-hundredths of one
7 percent by weight or, with respect to a person under twenty-one years of age, an
8 alcohol concentration of at least two one-hundredths of one percent by weight,
9 shall mail or issue to the person a notification of the test results, a temporary
10 operator's permit extending nonresident operating privileges in this state for
11 twenty-five days from the date of mailing or issuance or until earlier terminated by
12 the decision of a hearing officer under section 39-20-05, and notice of the intent to
13 revoke, suspend, or deny driving privileges in this state, together with the notice
14 provided under section 39-06.1-07 of the procedures available under this chapter.
15 The temporary operator's permit must be signed and dated by the officer.
- 16 3. The law enforcement officer, within five days of issuing the temporary operator's
17 permit, shall forward to the director a certified written report in the form required by
18 the director and a certified copy of the operational checklist and test records of a
19 breath test and a copy of the certified copy of the analytical report for a blood,
20 saliva, or urine test for all tests administered at the direction of the officer. If the
21 person was issued a temporary operator's permit because of the person's refusal
22 to submit to a test under sections 39-20-01 and 39-20-14, the report must include
23 information as provided in section 39-20-04. If the person was issued a temporary
24 operator's permit because of the results of a test, the report must show that the
25 officer had reasonable grounds to believe the person had been driving or was in
26 actual physical control of a motor vehicle while in violation of section 39-08-01, or
27 equivalent ordinance, that the person was lawfully arrested, that the person was
28 tested for alcohol concentration under this chapter, and that the results of the test
29 show that the person had an alcohol concentration of at least ~~ten~~ eight
30 one-hundredths of one percent by weight or, with respect to a person under

1 twenty-one years of age, an alcohol concentration of at least two one-hundredths
2 of one percent by weight.

3 **SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota
4 Century Code is amended and reenacted as follows:

- 5 1. After the receipt of a person's operator's license, if taken under section 39-20-03.1
6 or 39-20-03.2, and the certified report of a law enforcement officer and if no written
7 request for hearing has been received from the arrested person under section
8 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
9 from the hearing confirm that the law enforcement officer had reasonable grounds
10 to arrest the person and test results show that the arrested person was driving or in
11 physical control of a vehicle while having an alcohol concentration of at least ~~ten~~
12 eight one-hundredths of one percent by weight or, with respect to a person under
13 twenty-one years of age, an alcohol concentration of at least two one-hundredths
14 of one percent by weight at the time of the performance of a test within two hours
15 after driving or being in physical control of a motor vehicle, the director shall
16 suspend the person's operator's license as follows:
- 17 a. For ninety-one days if the person's driving record shows that, within the five
18 years preceding the date of the arrest, the person has not previously violated
19 section 39-08-01 or equivalent ordinance or the person's operator's license
20 has not previously been suspended or revoked under this chapter.
- 21 b. For three hundred sixty-five days if the person's driving record shows that,
22 within the five years preceding the date of the arrest, the person has once
23 previously violated section 39-08-01 or equivalent ordinance or the person's
24 operator's license has once previously been suspended or revoked under this
25 chapter.
- 26 c. For two years if the person's driving record shows that within the five years
27 preceding the date of the arrest, the person's operator's license has at least
28 twice previously been suspended, revoked, or issuance denied under this
29 chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any
30 combination thereof, and the suspensions, revocations, or denials resulted
31 from at least two separate arrests.

1 **SECTION 6. AMENDMENT.** Subsections 2 and 5 of section 39-20-05 of the North
2 Dakota Century Code are amended and reenacted as follows:

- 3 2. If the issue to be determined by the hearing concerns license suspension for
4 operating a motor vehicle while having an alcohol concentration of at least ~~ten~~
5 eight one-hundredths of one percent by weight or, with respect to a person under
6 twenty-one years of age, an alcohol concentration of at least two one-hundredths
7 of one percent by weight, the hearing must be before a hearing officer assigned by
8 the director and at a time and place designated by the director. The hearing must
9 be recorded and its scope may cover only the issues of whether the arresting
10 officer had reasonable grounds to believe the person had been driving or was in
11 actual physical control of a vehicle in violation of section 39-08-01 or equivalent
12 ordinance or, with respect to a person under twenty-one years of age, the person
13 had been driving or was in actual physical control of a vehicle while having an
14 alcohol concentration of at least two one-hundredths of one percent by weight;
15 whether the person was placed under arrest, unless the person was under
16 twenty-one years of age and the alcohol concentration was less than ~~ten~~ eight
17 one-hundredths of one percent by weight, then arrest is not required and is not an
18 issue under any provision of this chapter; whether the person was tested in
19 accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02;
20 and whether the test results show the person had an alcohol concentration of at
21 least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a
22 person under twenty-one years of age, an alcohol concentration of at least two
23 one-hundredths of one percent by weight. For purposes of this section, a copy of a
24 certified copy of an analytical report of a blood, urine, or saliva sample from the
25 state toxicologist or a certified copy of the checklist and test records from a certified
26 breath test operator establish prima facie the alcohol concentration shown therein.
27 Whether the person was informed that the privilege to drive might be suspended
28 based on the results of the test is not an issue.
- 29 5. At the close of the hearing, the hearing officer shall notify the person of the hearing
30 officer's findings of fact, conclusions of law, and decision based on the findings and
31 conclusions and shall immediately deliver to the person a copy of the decision. If

1 the hearing officer does not find in favor of the person, the copy of the decision
2 serves as the director's official notification to the person of the revocation,
3 suspension, or denial of driving privileges in this state. If the hearing officer finds,
4 based on a preponderance of the evidence, that the person refused a test under
5 section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at
6 least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a
7 person under twenty-one years of age, an alcohol concentration of at least two
8 one-hundredths of one percent by weight, the hearing officer shall immediately
9 take possession of the person's temporary operator's permit issued under this
10 chapter. If the hearing officer does not find against the person, the hearing officer
11 shall sign, date, and mark on the person's permit an extension of driving privileges
12 for the next twenty days and shall return the permit to the person. The hearing
13 officer shall report the findings, conclusions, and decisions to the director within ten
14 days of the conclusion of the hearing. If the hearing officer has determined in favor
15 of the person, the director shall return the person's operator's license by regular
16 mail to the address on file with the director under section 39-06-20.

17 **SECTION 7. AMENDMENT.** Section 39-20-07 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **39-20-07. Interpretation of chemical tests.** Upon the trial of any civil or criminal
20 action or proceeding arising out of acts alleged to have been committed by any person while
21 driving or in actual physical control of a motor vehicle while under the influence of intoxicating
22 liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a
23 combination thereof in the person's blood at the time of the act alleged as shown by a chemical
24 analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

- 25 1. A person having, at that time, an alcohol concentration of not more than five
26 one-hundredths of one percent by weight is presumed not to be under the
27 influence of intoxicating liquor. This presumption has no application to the
28 administration of chapter 39-06.2.
- 29 2. Evidence that there was at that time more than five one-hundredths of one percent
30 by weight alcohol concentration in a person is relevant evidence, but it is not to be

- 1 given prima facie effect in indicating whether the person was under the influence of
2 intoxicating liquor.
- 3 3. A person having an alcohol concentration of at least ~~ten~~ eight one-hundredths of
4 one percent by weight or, with respect to a person under twenty-one years of age,
5 an alcohol concentration of at least two one-hundredths of one percent by weight
6 at the time of the performance of a chemical test within two hours after driving or
7 being in physical control of a vehicle is under the influence of intoxicating liquor at
8 the time of driving or being in physical control of a vehicle.
- 9 4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of
10 blood or grams of alcohol per two hundred ten liters of alveolar air or grams of
11 alcohol per sixty-seven milliliters of urine.
- 12 5. The results of the chemical analysis must be received in evidence when it is shown
13 that the sample was properly obtained and the test was fairly administered, and if
14 the test is shown to have been performed according to methods and with devices
15 approved by the state toxicologist, and by an individual possessing a certificate of
16 qualification to administer the test issued by the state toxicologist. The state
17 toxicologist is authorized to approve satisfactory devices and methods of chemical
18 analysis and determine the qualifications of individuals to conduct such analysis,
19 and shall issue a certificate to all qualified operators who exhibit the certificate
20 upon demand of the person requested to take the chemical test.
- 21 6. The state toxicologist may appoint, train, certify, and supervise field inspectors of
22 breath testing equipment and its operation, and the inspectors shall report the
23 findings of any inspection to the state toxicologist for appropriate action. Upon
24 approval of the methods or devices, or both, required to perform the tests and the
25 persons qualified to administer them, the state toxicologist shall prepare and file
26 written record of the approval with the director and the recorder in each county,
27 unless the board of county commissioners designates a different official, and shall
28 include in the record:
- 29 a. An annual register of the specific testing devices currently approved, including
30 serial number, location, and the date and results of last inspection.

- 1 b. An annual register of currently qualified and certified operators of the devices,
2 stating the date of certification and its expiration.
- 3 c. The operational checklist and forms prescribing the methods currently
4 approved by the state toxicologist in using the devices during the
5 administration of the tests.

6 The material filed under this section may be supplemented when the state
7 toxicologist determines it to be necessary, and any supplemental material has the
8 same force and effect as the material that it supplements.

- 9 7. Copies of the records referred to in subsections 5 and 6, certified by the recorder,
10 or designated official, must be admitted as prima facie evidence of the matters
11 stated in the records.
- 12 8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred
13 to in subsection 5 and which is issued by the state toxicologist must be accepted
14 as prima facie evidence of the results of a chemical analysis performed under this
15 chapter. The certified copy satisfies the directives of subsection 5.
- 16 9. Notwithstanding any statute or rule to the contrary, a defendant who has been
17 found to be indigent by the court in the criminal proceeding at issue may subpoena,
18 without cost to the defendant, the person who conducted the chemical analysis
19 referred to in this section to testify at the trial on the issue of the amount of alcohol,
20 drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at
21 the time of the alleged act. If the state toxicologist, the director of the forensic
22 sciences division of the state department of health, or any employee of either, is
23 subpoenaed to testify by a defendant who is not indigent and the defendant does
24 not call the witness to establish relevant evidence, the court shall order the
25 defendant to pay costs to the witness as provided in section 31-01-16.
- 26 10. A signed statement from the individual medically qualified to draw the blood
27 sample for testing as set forth in subsection 5 is prima facie evidence that the
28 blood sample was properly drawn and no further foundation for the admission of
29 this evidence may be required.

30 **SECTION 8. AMENDMENT.** Section 39-20-09 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **39-20-09. Effect of evidence of chemical test.** This chapter does not limit the
2 introduction of any other competent evidence bearing on the question of whether the person
3 was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test
4 results show an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent or,
5 with respect to a person under twenty-one years of age, an alcohol concentration of at least two
6 one-hundredths of one percent by weight, the purpose of such evidence must be limited to the
7 issues of probable cause, whether an arrest was made prior to the administering of the test,
8 and the validity of the test results.