

**BILL NO.**

Introduced by

Senator Armstrong

1 A BILL for an Act to amend and reenact section 39-20-01 and subsections 2 and 3 of section  
2 39-20-05 of the North Dakota Century Code, relating to the duty to inform of the consequences  
3 of refusing a test to determine alcohol concentration and presence of drugs.

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

5 **SECTION 1. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **39-20-01. Implied consent to determine alcohol concentration and presence of drugs.**

- 8 1. Any individual who operates a motor vehicle on a highway or on public or private  
9 areas to which the public has a right of access for vehicular use in this state is deemed  
10 to have given consent, and shall consent, subject to the provisions of this chapter, to a  
11 chemical test, or tests, of the blood, breath, or urine for the purpose of determining the  
12 alcohol concentration or presence of other drugs, or combination thereof, in the  
13 individual's blood, breath, or urine. As used in this chapter, the word "drug" means any  
14 drug or substance or combination of drugs or substances which renders an individual  
15 incapable of safely driving, and the words "chemical test" or "chemical analysis" mean  
16 any test to determine the alcohol concentration or presence of other drugs, or  
17 combination thereof, in the individual's blood, breath, or urine, approved by the  
18 director of the state crime laboratory or the director's designee under this chapter.
- 19 2. The test or tests must be administered at the direction of a law enforcement officer  
20 only after placing the individual, except individuals mentioned in section 39-20-03,  
21 under arrest and informing that individual that the individual is or will be charged with  
22 the offense of driving or being in actual physical control of a vehicle upon the public  
23 highways while under the influence of intoxicating liquor, drugs, or a combination  
24 thereof. For the purposes of this chapter, the taking into custody of a child under

1 section 27-20-13 or an individual under twenty-one years of age satisfies the  
2 requirement of an arrest.

3 3. a. The law enforcement officer shall inform the individual charged that North Dakota  
4 law requires the individual to take the test to determine whether the individual is  
5 under the influence of alcohol or drugs; that refusal to take the test directed by  
6 the law enforcement officer is a crime punishable in the same manner as driving  
7 under the influence; and that refusal of the individual to submit to the test directed  
8 by the law enforcement officer may result in a revocation for a minimum of one  
9 hundred eighty days and up to three years of the individual's driving privileges.  
10 The law enforcement officer shall determine which of the tests is to be used.

11 b. A test administered under this section is not admissible in any criminal or  
12 administrative proceeding to determine a violation of section 39-08-01 or this  
13 chapter unless the law enforcement officer provides the individual charged with  
14 the information required under subdivision a.

15 4. When an individual under the age of eighteen years is taken into custody for violating  
16 section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt  
17 to contact the individual's parent or legal guardian to explain the cause for the custody.  
18 Neither the law enforcement officer's efforts to contact, nor any consultation with, a  
19 parent or legal guardian may be permitted to interfere with the administration of  
20 chemical testing requirements under this chapter. The law enforcement officer shall  
21 mail a notice to the parent or legal guardian of the minor within ten days after the test  
22 results are received or within ten days after the minor is taken into custody if the minor  
23 refuses to submit to testing. The notice must contain a statement of the test performed  
24 and the results of that test; or if the minor refuses to submit to the testing, a statement  
25 notifying of that fact. The attempt to contact or the contacting or notification of a parent  
26 or legal guardian is not a precondition to the admissibility of chemical test results or  
27 the finding of a consent to, or refusal of, chemical testing by the individual in custody.

28 **SECTION 2. AMENDMENT.** Subsections 2 and 3 of section 39-20-05 of the North Dakota  
29 Century Code are amended and reenacted as follows:

30 2. If the issue to be determined by the hearing concerns license suspension for operating  
31 a motor vehicle while having an alcohol concentration of at least eight one-hundredths

1 of one percent by weight or, with respect to an individual under twenty-one years of  
2 age, an alcohol concentration of at least two one-hundredths of one percent by weight,  
3 the hearing must be before a hearing officer assigned by the director and at a time and  
4 place designated by the director. The hearing must be recorded and its scope may  
5 cover only the issues of whether the arresting officer had reasonable grounds to  
6 believe the individual had been driving or was in actual physical control of a vehicle in  
7 violation of section 39-08-01 or equivalent ordinance or, with respect to an individual  
8 under twenty-one years of age, the individual had been driving or was in actual  
9 physical control of a vehicle while having an alcohol concentration of at least two  
10 one-hundredths of one percent by weight; whether the individual was placed under  
11 arrest, unless the individual was under twenty-one years of age and the alcohol  
12 concentration was less than eight one-hundredths of one percent by weight, then  
13 arrest is not required and is not an issue under any provision of this chapter; whether  
14 the individual was tested in accordance with section 39-20-01 or 39-20-03 and, if  
15 applicable, section 39-20-02; and whether the test results show the individual had an  
16 alcohol concentration of at least eight one-hundredths of one percent by weight or,  
17 with respect to an individual under twenty-one years of age, an alcohol concentration  
18 of at least two one-hundredths of one percent by weight. For purposes of this section,  
19 a copy of a certified copy of an analytical report of a blood or urine sample from the  
20 director of the state crime laboratory or the director's designee, or electronically posted  
21 by the director of the state crime laboratory or the director's designee on the crime  
22 laboratory information management system and certified by a law enforcement officer  
23 or individual who has authorized access to the crime laboratory management system  
24 through the criminal justice data information sharing system or a certified copy of the  
25 checklist and test records from a certified breath test operator, and a copy of a certified  
26 copy of a certificate of the director of the state crime laboratory designating the  
27 director's designees, establish prima facie the alcohol concentration or the presence of  
28 drugs, or a combination thereof, shown therein. ~~Whether the individual was informed~~  
29 ~~that the privilege to drive might be suspended based on the results of the test is not an~~  
30 ~~issue.~~

1           3. If the issue to be determined by the hearing concerns license revocation for refusing to  
2           submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a  
3           hearing officer assigned by the director at a time and place designated by the director.  
4           The hearing must be recorded. The scope of a hearing for refusing to submit to a test  
5           under section 39-20-01 may cover only the issues of whether a law enforcement  
6           officer had reasonable grounds to believe the person had been driving or was in actual  
7           physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or,  
8           with respect to a person under twenty-one years of age, the person had been driving  
9           or was in actual physical control of a vehicle while having an alcohol concentration of  
10          at least two one-hundredths of one percent by weight; whether the person was placed  
11          under arrest; and whether that person refused to submit to the test or tests. The scope  
12          of a hearing for refusing to submit to a test under section 39-20-14 may cover only the  
13          issues of whether the law enforcement officer had reason to believe the person  
14          committed a moving traffic violation or was involved in a traffic accident as a driver,  
15          whether in conjunction with the violation or the accident the officer has, through the  
16          officer's observations, formulated an opinion that the person's body contains alcohol  
17          and, whether the person refused to submit to the onsite screening test. ~~Whether the~~  
18          ~~person was informed that the privilege to drive would be revoked or denied for refusal~~  
19          ~~to submit to the test or tests is not an issue.~~