

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2176**

Introduced by

Senator Armstrong

1 A BILL for an Act to amend and reenact subdivision e of subsection 1 of section 39-08-01,
2 subsection 7 of section 39-08-01, subsection 3 of section 39-08-01.2, subdivision a of
3 subsection 3 of section 39-20-01, sections 39-20-03.1 and 39-20-03.2, subsection 2 of section
4 39-20-05, and subsection 3 of section 39-20-14 of the North Dakota Century Code, relating to
5 driving under the influence; to repeal section 39-20-03 of the North Dakota Century Code,
6 relating to driving under the influence; and to provide a penalty.

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

8 **SECTION 1. AMENDMENT.** Subdivision e of subsection 1 of section 39-08-01 of the North
9 Dakota Century Code is amended and reenacted as follows:

10 e. That individual refuses to submit to any of the following:

- 11 (1) A chemical test, or tests, of the individual's blood, breath, or urine to
12 determine the alcohol concentration or presence of other drugs, or
13 combination thereof, in the individual's blood, breath, or urine, at the
14 direction of a law enforcement officer under section 39-06.2-10.2 if the
15 individual is driving or is in actual physical control of a commercial motor
16 vehicle; or
17 (2) A chemical test, or tests, of the individual's blood, breath, or urine to
18 determine the alcohol concentration or presence of other drugs, or
19 combination thereof, in the individual's blood, breath, or urine, at the
20 direction of a law enforcement officer under section 39-20-01; ~~or~~
21 ~~(3) An onsite screening test, or tests, of the individual's breath for the purpose~~
22 ~~of estimating the alcohol concentration in the individual's breath upon the~~
23 ~~request of a law enforcement officer under section 39-20-14.~~

1 **SECTION 2. AMENDMENT.** Subsection 7 of section 39-08-01 of the North Dakota Century
2 Code is amended and reenacted as follows:

3 7. As used in this title, participation in the twenty-four seven sobriety program under
4 chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and
5 requires sobriety breath testing twice per day seven days per week or electronic
6 alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for
7 all twenty-four seven sobriety program fees and the court may not waive the fees. For
8 purposes of this section, the twenty-four seven sobriety program is a condition of
9 probation and a court may not order participation in the program as part of the
10 sentence. If an individual ordered to participate in the twenty-four seven program is not
11 a resident of this state, that individual shall enroll in a twenty-four seven program or an
12 alcohol compliance program if available in that individual's state of residence and shall
13 file proof of such enrollment.

14 **SECTION 3. AMENDMENT.** Subsection 3 of section 39-08-01.2 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 3. The sentence under this section may not be suspended unless the court finds that
17 manifest injustice would result from the imposition of the sentence. Before a sentence
18 under this section applies, a defendant must be notified of the minimum mandatory
19 sentence. The elements of an offense under this section are the elements of an
20 offense for a violation of section 39-08-01 and the additional elements that create an
21 offense in each subsection of this section. Whether an individual caused death or
22 substantial or serious bodily injury must be determined in accordance with section
23 12.1-02-05.

24 **SECTION 4. AMENDMENT.** Subdivision a of subsection 3 of section 39-20-01 of the North
25 Dakota Century Code is amended and reenacted as follows:

26 a. The law enforcement officer shall inform the individual charged that North Dakota
27 law requires the individual to take ~~the~~ a chemical test to determine whether the
28 individual is under the influence of alcohol or drugs; ~~that refusal to take the and~~
29 that refusal of the individual to submit to a test directed by the law enforcement
30 officer is a crime punishable in the same manner as driving under the influence;
31 ~~and that refusal of the individual to submit to the test directed by the law~~

1 enforcement officer may result in a revocation for a minimum of one hundred
2 ~~eighty days and up to three years of the individual's driving privileges~~ may result
3 in a revocation of the individual's driving privileges for a minimum of one hundred
4 eighty days and up to three years. In addition, the law enforcement officer shall
5 inform the individual refusal to take a breath or urine test is a crime punishable in
6 the same manner as driving under the influence. If the officer requests the
7 individual to submit to a blood test, the officer may not inform the individual of any
8 criminal penalties until the officer has first secured a search warrant.

9 **SECTION 5. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **39-20-03.1. Action following test result for a resident operator.**

12 If a person submits to a test under section 39-20-01; or 39-20-02; ~~or 39-20-03~~ and the test
13 shows that person to have an alcohol concentration of at least eight one-hundredths of one
14 percent by weight or, with respect to a person under twenty-one years of age, an alcohol
15 concentration of at least two one-hundredths of one percent by weight at the time of the
16 performance of a chemical test within two hours after the driving or being in actual physical
17 control of a vehicle, the following procedures apply:

- 18 1. The law enforcement officer shall immediately issue to that person a temporary
19 operator's permit if the person then has valid operating privileges, extending driving
20 privileges for the next twenty-five days, or until earlier terminated by the decision of a
21 hearing officer under section 39-20-05. The law enforcement officer shall sign and
22 note the date on the temporary operator's permit. The temporary operator's permit
23 serves as the director's official notification to the person of the director's intent to
24 revoke, suspend, or deny driving privileges in this state.
- 25 2. If a test administered under section 39-20-01 ~~or 39-20-03~~ was by urine sample or by
26 drawing blood as provided in section 39-20-02 and the individual tested is not a
27 resident of an area in which the law enforcement officer has jurisdiction, the law
28 enforcement officer shall, on receiving the analysis of the urine or blood from the
29 director of the state crime laboratory or the director's designee and if the analysis
30 shows that individual had an alcohol concentration of at least eight one-hundredths of
31 one percent by weight or, with respect to an individual under twenty-one years of age,

1 an alcohol concentration of at least two one-hundredths of one percent by weight,
2 either proceed in accordance with subsection 1 during that individual's reappearance
3 within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law
4 enforcement agency having jurisdiction where the individual lives. On that notification,
5 that law enforcement agency shall, within twenty-four hours, forward a copy of the
6 temporary operator's permit to the law enforcement agency making the arrest or to the
7 director. The law enforcement agency shall issue to that individual a temporary
8 operator's permit as provided in this section, and shall sign and date the permit as
9 provided in subsection 1.

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

20 4. The law enforcement officer, within five days of the issuance of the temporary
21 operator's permit, shall forward to the director a certified written report in the form
22 required by the director. If the individual was issued a temporary operator's permit
23 because of the results of a test, the report must show that the officer had reasonable
24 grounds to believe the individual had been driving or was in actual physical control of a
25 motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the
26 individual was lawfully arrested, that the individual was tested for alcohol concentration
27 under this chapter, and that the results of the test show that the individual had an
28 alcohol concentration of at least eight one-hundredths of one percent by weight or,
29 with respect to an individual under twenty-one years of age, an alcohol concentration
30 of at least two one-hundredths of one percent by weight. In addition to the operator's
31 license and report, the law enforcement officer shall forward to the director a certified

1 copy of the operational checklist and test records of a breath test and a copy of the
2 certified copy of the analytical report for a blood or urine test for all tests administered
3 at the direction of the officer.

4 5. An individual charged with a violation of section 39-08-01 or equivalent ordinance may
5 elect to participate in the twenty-four seven sobriety program under chapter 54-12 in
6 lieu of the administrative hearing under this chapter if the individual's driver's license is
7 not subject to an unrelated suspension or revocation. Notwithstanding any other
8 provision of law, an individual may not receive a temporary restricted operator's
9 license until after fourteen days after the administrative hearing on the offense under
10 this chapter has been waived or held, or after fourteen days of the final appeal,
11 whichever is longer. The director shall issue a temporary restricted driver's license with
12 the restriction the individual participate in the twenty-four seven sobriety program upon
13 application by the individual with submission of proof of financial responsibility and
14 proof of participation in the twenty-four seven sobriety program under chapter 54-12.

15 **SECTION 6. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **39-20-03.2. Action following test result or on refusing test by nonresident operator.**

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

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

1 director's intent to revoke, suspend, or deny driving privileges in this state, and of the
2 hearing procedures under this chapter.

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

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 the
18 director and a certified copy of the operational checklist and test records of a breath
19 test and a copy of the certified copy of the analytical report for a blood or urine test for
20 all tests administered at the direction of the officer. If the individual was issued a
21 temporary operator's permit because of the individual's refusal to submit to a test
22 under sections 39-20-01 and 39-20-14, the report must include information as
23 provided in section 39-20-04. If the individual was issued a temporary operator's
24 permit because of the results of a test, the report must show that the officer had
25 reasonable grounds to believe the individual had been driving or was in actual physical
26 control of a motor vehicle while in violation of section 39-08-01, or equivalent
27 ordinance, that the individual was lawfully arrested, that the individual was tested for
28 alcohol concentration under this chapter, and that the results of the test show that the
29 individual had an alcohol concentration of at least eight one-hundredths of one percent
30 by weight or, with respect to an individual under twenty-one years of age, an alcohol
31 concentration of at least two one-hundredths of one percent by weight.

1 **SECTION 7. AMENDMENT.** Subsection 2 of section 39-20-05 of the North Dakota Century
2 Code is amended and reenacted as follows:

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

1 director's designees, establish prima facie the alcohol concentration or the presence of
2 drugs, or a combination thereof, shown therein.

3 **SECTION 8. AMENDMENT.** Subsection 3 of section 39-20-14 of the North Dakota Century
4 Code is amended and reenacted as follows:

5 3. The screening test or tests must be performed by an enforcement officer certified as a
6 chemical test operator by the director of the state crime laboratory or the director's
7 designee and according to methods and with devices approved by the director of the
8 state crime laboratory or the director's designee. The results of such screening test
9 must be used only for determining whether or not a further test shall be given under
10 the provisions of section 39-20-01. The officer shall inform the individual that North
11 Dakota law requires the individual to take the screening test to determine whether the
12 individual is under the influence of alcohol, ~~that refusal to take the screening test is a~~
13 ~~crime,~~ and that refusal of the individual to submit to a screening test may result in a
14 revocation for at least one hundred eighty days and up to three years of that
15 individual's driving privileges. If such individual refuses to submit to such screening
16 test or tests, none may be given, but such refusal is admissible in a court proceeding if
17 the individual was arrested in violation of 39-08-01 and did not take any additional
18 chemical tests requested by the law enforcement officer. Such refusal is sufficient
19 cause to revoke such individual's license or permit to drive in the same manner as
20 provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a
21 judicial review as provided in section 39-20-06 must be available.

22 **SECTION 9. REPEAL.** Section 39-20-03 of the North Dakota Century Code is repealed.