

**HOUSE BILL NO. 1129**

Introduced by

Transportation Committee

(At the request of the Department of Transportation)

1 A BILL for an Act to amend and reenact subsections 1, 5, and 6 of section 39-06.2-10.6, section  
2 39-06.2-10.7, subsections 1, 5, and 6 of section 39-20-05, and section 39-20-06 of the North  
3 Dakota Century Code, relating to hearing requirements for commercial vehicles and for  
4 commercial and noncommercial driver's licenses.

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

6 **SECTION 1. AMENDMENT.** Subsections 1, 5, and 6 of section 39-06.2-10.6 of the North  
7 Dakota Century Code are amended and reenacted as follows:

- 8 1. Before issuing an order of suspension, revocation, or disqualification under section  
9 39-06.2-10, the director shall afford that person an opportunity for a hearing as  
10 provided by section 39-20-05, if the person mails a request for the hearing to the  
11 director within ~~ten~~fifteen days after the date of issuance of the temporary driver's  
12 permit. ~~The~~If any participant to the hearing is unavailable to appear in person, the  
13 administrative hearing may be conducted in total or in part by~~telephone, television,~~  
14 ~~facsimile services,~~ or other electronic video means as determined by the hearing  
15 officer.
- 16 5. ~~At~~Within ten days of the close of the hearing, the hearing officer shall ~~notify the person~~  
17 ~~of~~issue the hearing officer's findings of fact, conclusions of law, and decision ~~based on~~  
18 ~~the findings and conclusions~~ and shall immediately deliver to the person a copy of the  
19 decision. ~~If the hearing officer does not find in favor of the person, the copy of the~~  
20 ~~decision serves as the director's official notification to the person of the revocation,~~  
21 ~~suspension, or denial of driving privileges in this state by regular mail at the address~~  
22 on file with the director under section 39-06-20 or at any other address for the person  
23 or the person's legal representative supplied in the request for hearing. The person's  
24 temporary driver's permit remains in effect until three days after the date of mailing of

1           the decision. The hearing officer's decision terminates any temporary driver's permit  
2           issued under this chapter. If the hearing officer finds, based on a preponderance of the  
3           evidence, that the person refused a test under section 39-06.2-10.2 or that the person  
4           had an alcohol concentration of at least four one-hundredths of one percent by weight,  
5           ~~the hearing officer shall immediately take possession of the person's temporary~~  
6           ~~driver's permit issued under this chapter. If the hearing officer does not find against the~~  
7           ~~person, the hearing officer shall sign, date, and mark on the person's permit an~~  
8           ~~extension of driving privileges for the next twenty days and shall return the permit to~~  
9           ~~the person~~the copy of the decision serves as the director's official notification to the  
10           person of the revocation, suspension, or denial of driving privileges in this state. If the  
11           hearing officer finds in favor of the person, the decision must include a notice of  
12           reinstatement unless the person is otherwise ineligible for driving privileges. The  
13           hearing officer shall report the findings, conclusions, and decisions to the director  
14           within ten days of the ~~conclusion~~date of the hearing. If the hearing officer has  
15           determined in favor of the person, the director shall return the person's commercial  
16           driver's license by regular mail to the address on file with the director under section  
17           39-06.2-08.

- 18           6. If the person who requested a hearing under this section fails to appear at the hearing  
19           without justification, the right to the hearing is waived, and the hearing officer's  
20           determination on license revocation, suspension, or denial will be based on the written  
21           request for hearing, law enforcement officer's report, and other evidence as may be  
22           available. ~~On the date for which~~Within ten days after the close of the hearing is-  
23           ~~scheduled,~~ the hearing officer shall mail to the person, by regular mail, at the address  
24           on file with the director under section 39-06-20, or at any other address for the person  
25           or the person's legal representative supplied in the request for hearing, a copy of the  
26           decision which serves as the director's official notification to the person of the  
27           revocation, suspension, or denial of driving privileges in this state. Even if the person  
28           for whom the hearing is scheduled fails to appear at the hearing, the hearing is  
29           deemed to have been held on the date for which it is scheduled for purposes of appeal  
30           under section 39-06.2-10.7.

1       **SECTION 2. AMENDMENT.** Section 39-06.2-10.7 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **39-06.2-10.7. Judicial review.**

4       Any person whose commercial driver's license or privilege has been suspended, revoked,  
5 or denied by the decision of the hearing officer under section 39-06.2-10.6 may appeal within  
6 seven days after the date of the ~~hearing under section 39-06.2-10.6 as shown by the~~  
7 ~~date~~mailing of the hearing officer's decision, section 28-32-42 notwithstanding, by serving on  
8 the director and filing a notice of appeal and specifications of error in the district court in the  
9 county where the events occurred for which the demand for a test was made, or in the county in  
10 which the administrative hearing was held. The court shall set the matter for hearing, and the  
11 petitioner shall give twenty days' notice of the hearing to the director and to the hearing officer  
12 who rendered the decision. Neither the director nor the court may stay the decision pending  
13 decision on appeal. Within twenty days after receipt of the notice of appeal, the director or the  
14 hearing officer who rendered the decision shall file in the office of the clerk of court to which the  
15 appeal is taken a certified transcript of the testimony and all other proceedings. It is the record  
16 on which the appeal must be determined. No additional evidence may be heard. The court shall  
17 affirm the decision of the director or hearing officer unless it finds the evidence insufficient to  
18 warrant the conclusion reached by the director or hearing officer. The court may direct that the  
19 matter be returned to the director or hearing officer for rehearing and the presentation of  
20 additional evidence.

21       **SECTION 3. AMENDMENT.** Subsections 1, 5, and 6 of section 39-20-05 of the North  
22 Dakota Century Code are amended and reenacted as follows:

23       1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or  
24 39-20-04.1, the director shall afford that person an opportunity for a hearing if the  
25 person mails or communicates by other means authorized by the director a request for  
26 the hearing to the director within ten days after the date of issuance of the temporary  
27 operator's permit. Upon completion of the hearing, an individual may elect to  
28 participate in the twenty-four seven sobriety program under chapter 54-12. The  
29 hearing must be held within ~~thirty~~forty-five days after the date of issuance of the  
30 temporary operator's permit. If no hearing is requested within the time limits in this  
31 section, and no affidavit is submitted within the time limits under subsection 2 of

1 section 39-20-04, and if the individual has not provided the director with written notice  
2 of election to participate in the twenty-four seven sobriety program under chapter  
3 54-12, the expiration of the temporary operator's permit serves as the director's official  
4 notification to the person of the revocation, suspension, or denial of driving privileges  
5 in this state. The if any participant to the hearing is unavailable to appear in person, the  
6 administrative hearing may be conducted in total or in part by ~~telephone, television,~~  
7 ~~facsimile services,~~ or other electronic video means as determined by the hearing  
8 officer.

- 9 5. AtWithin ten days of the close of the hearing, the hearing officer shall notify the person  
10 ofissue the hearing officer's findings of fact, conclusions of law, and decision based on  
11 the findings and conclusions and shall immediately deliver to the person a copy of the  
12 decision. If the hearing officer does not find in favor of the person, the copy of the  
13 decision serves as the director's official notification to the person of the revocation,  
14 suspension, or denial of driving privileges in this state by regular mail at the address  
15 on file with the director under section 39-06-20 or at any other address for the person  
16 or the person's legal representative supplied in the request for hearing. The person's  
17 temporary operator's permit remains in effect until three days after the date of mailing  
18 of the decision. The hearing officer's decision terminates any temporary operator's  
19 permit issues under this chapter. If the hearing officer finds, based on a  
20 preponderance of the evidence, that the person refused a test under section 39-20-01  
21 or 39-20-14 or that the person had an alcohol concentration of at least eight  
22 one-hundredths of one percent by weight or, with respect to a person under  
23 twenty-one years of age, an alcohol concentration of at least two one-hundredths of  
24 one percent by weight, the hearing officer shall immediately take possession of the  
25 person's temporary operator's permit issued under this chapter. If the hearing officer  
26 does not find against the person, the hearing officer shall sign, date, and mark on the  
27 person's permit an extension of driving privileges for the next twenty days and shall  
28 return the permit to the person the copy of the decision serves as the director's official  
29 notification to the person of the revocation, suspension, or denial of driving privileges  
30 in this state. If the hearing officer finds in favor of the person, the decision must include  
31 a notice of reinstatement unless the person is otherwise ineligible for driving privileges.

1           The hearing officer shall report the findings, conclusions, and decisions to the director  
2           within ten days of the ~~conclusion~~date of the hearing. If the hearing officer has  
3           determined in favor of the person, the director shall return the person's operator's  
4           license by regular mail to the address on file with the director under section 39-06-20.  
5           6. If the person who requested a hearing under this section fails to appear at the hearing  
6           without justification, the right to the hearing is waived, and the hearing officer's  
7           determination on license revocation, suspension, or denial will be based on the written  
8           request for hearing, law enforcement officer's report, and other evidence as may be  
9           available. The hearing officer shall, ~~on the date for which the hearing is~~  
10          ~~scheduled~~within ten days after the close of the hearing, mail to the person, by regular  
11          mail, at the address on file with the director under section 39-06-20, or at any other  
12          address for the person or the person's legal representative supplied in the request for  
13          hearing, a copy of the decision which serves as the director's official notification to the  
14          person of the revocation, suspension, or denial of driving privileges in this state. Even  
15          if the person for whom the hearing is scheduled fails to appear at the hearing, the  
16          hearing is deemed to have been held on the date for which it is scheduled for  
17          purposes of appeal under section 39-20-06.

18          **SECTION 4. AMENDMENT.** Section 39-20-06 of the North Dakota Century Code is  
19          amended and reenacted as follows:

20          **39-20-06. Judicial review.**

21          Any person whose operator's license or privilege has been suspended, revoked, or denied  
22          by the decision of the hearing officer under section 39-20-05 may appeal within seven days  
23          after the date of the ~~hearing under section 39-20-05 as shown by the date~~mailing of the hearing  
24          officer's decision, section 28-32-42 notwithstanding, by serving on the director and filing a notice  
25          of appeal and specifications of error in the district court in the county where the events occurred  
26          for which the demand for a test was made, or in the county in which the administrative hearing  
27          was held. The court shall set the matter for hearing, and the petitioner shall give twenty days'  
28          notice of the hearing to the director and to the hearing officer who rendered the decision.  
29          Neither the director nor the court may stay the decision pending decision on appeal. Within  
30          twenty days after receipt of the notice of appeal, the director or the hearing officer who rendered  
31          the decision shall file in the office of the clerk of court to which the appeal is taken a certified

1 transcript of the testimony and all other proceedings. It is the record on which the appeal must  
2 be determined. No additional evidence may be heard. The court shall affirm the decision of the  
3 director or hearing officer unless it finds the evidence insufficient to warrant the conclusion  
4 reached by the director or hearing officer. The court may direct that the matter be returned to  
5 the director or hearing officer for rehearing and the presentation of additional evidence.