

HOUSE BILL NO. 1370

Introduced by

Representatives Heinert, Jonas, Meier, Pyle, Richter

Senators Cleary, Rummel, Sickler, Thomas

1 A BILL for an Act to amend and reenact subsection 3 of section 39-20-05 and section 39-20-14
2 of the North Dakota Century Code, relating to onsite screening tests and administrative
3 hearings for refusing to submit to a chemical test.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 39-20-05 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 3. If the issue to be determined by the hearing concerns license revocation for refusing to
8 submit to a test under section 39-20-01 or 39-20-14, the hearing must be before a
9 hearing officer assigned by the director at a time and place designated by the director.
10 The hearing must be recorded. The scope of a hearing for refusing to submit to a test
11 under section 39-20-01 may cover only the issues of whether a law enforcement
12 officer had reasonable grounds to believe the person had been driving or was in actual
13 physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or,
14 with respect to a person under twenty-one years of age, the person had been driving
15 or was in actual physical control of a vehicle while having an alcohol concentration of
16 at least two one-hundredths of one percent by weight; whether the person was placed
17 under arrest; and whether that person refused to submit to the test or tests. The scope
18 of a hearing for refusing to submit to a test under section 39-20-14 may cover only the
19 issues of whether the law enforcement officer had reason to believe the person
20 committed a moving traffic violation or a violation under section 39-08-01 or an
21 equivalent offense, or was involved in a traffic accident as a driver, whether in
22 conjunction with the violation or the accident the officer has, through the officer's
23 observations, formulated an opinion that the person's body contains alcohol or other

1 drugs or substances and, whether the person refused to submit to the onsite
2 screening test.

3 **SECTION 2. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **39-20-14. Screening tests.**

6 1. Any individual who operates a motor vehicle upon the public highways of this state is
7 deemed to have given consent to submit to an onsite screening test or tests of the
8 individual's breath or oral fluid for the purpose of estimating the alcohol concentration
9 or presence of other drugs in the individual's breath or oral fluid upon the request of a
10 law enforcement officer who has reason to believe ~~that~~ the individual committed a
11 moving traffic violation or a violation under section 39-08-01 or an equivalent offense,
12 or was involved in a traffic accident as a driver, and in conjunction with the violation or
13 the accident the officer has, through the officer's observations, formulated an opinion
14 that the individual's body contains alcohol or other drugs.

15 2. An individual may not be required to submit to a screening test or tests of breath or
16 oral fluid while at a hospital as a patient if the medical practitioner in immediate charge
17 of the individual's case is not first notified of the proposal to make the requirement, or
18 objects to the test or tests on the ground that such would be prejudicial to the proper
19 care or treatment of the patient.

20 3. The screening test or tests must be performed by an enforcement officer certified as a
21 chemical test operator by the director of the state crime laboratory or the director's
22 designee and according to methods and with devices approved by the director of the
23 state crime laboratory or the director's designee. The results of such screening test
24 must be used only for determining whether or not a further test shall be given under
25 the provisions of section 39-20-01. The officer shall inform the individual that North
26 Dakota law requires the individual to take the screening test to determine whether the
27 individual is under the influence of alcohol or other drugs and that refusal of the
28 individual to submit to a screening test may result in a revocation for at least one
29 hundred eighty days and up to three years of that individual's driving privileges. If such
30 individual refuses to submit to such screening test or tests, none may be given, but
31 such refusal is admissible in a court proceeding if the individual was arrested in

1 violation of section 39-08-01 and did not take any additional chemical tests requested
2 by the law enforcement officer. Such refusal is sufficient cause to revoke such
3 individual's license or permit to drive in the same manner as provided in section
4 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as
5 provided in section 39-20-06 must be available.

6 4. The director ~~must~~may not revoke an individual's driving privileges for refusing to
7 submit to a screening test requested under this section if the individual provides a
8 sufficient breath, blood, or urine sample for a chemical test requested under section
9 39-20-01 for the same incident.

10 5. No provisions of this section may supersede any provisions of chapter 39-20, nor may
11 any provision of chapter 39-20 be construed to supersede this section except as
12 provided herein.

13 6. For the purposes of this section, "chemical test operator" means an individual certified
14 by the director of the state crime laboratory or the director's designee as qualified to
15 perform analysis for alcohol or other drugs in an individual's blood, breath, oral fluid, or
16 urine.