

**HOUSE BILL NO. 1134**

Introduced by

Representative Lloyd

1 A BILL for an Act to amend and reenact subsection 7 of section 39-06-32, subdivision a of  
2 subsection 1 of section 39-08-01, sections 39-20-03.1, 39-20-03.2, subsection 1 of section  
3 39-20-04.1, subsections 2 and 5 of section 39-20-05, subsection 3 of section 39-20-07, and  
4 section 39-20-09 of the North Dakota Century Code, relating to the alcohol concentration for  
5 motor vehicle operators.

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

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

9 7. An administrative decision in another state that the licensee's privilege to drive in  
10 that state is suspended or revoked because of a violation of that state's law  
11 forbidding motor vehicle operation with 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, or because of a violation of that state's law forbidding the  
15 driving or being in actual physical control of a commercial motor vehicle while  
16 having an alcohol concentration of at least four one-hundredths of one percent by  
17 weight. The specific requirements for establishing the violation in the other state  
18 may not be considered and certified copies of the records of the other state's  
19 drivers licensing authority are sufficient evidence of the violation. The suspension  
20 must be for the same duration as the suspension in section 39-20-04.1, if the  
21 violation does not involve a commercial motor vehicle. If the violation involves a  
22 commercial motor vehicle, the period of suspension must be the same as the  
23 period of suspension provided in section 39-06.2-10.

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

3           a. That person has an alcohol concentration of at least ~~ten~~ eight one-hundredths  
4 of one percent by weight at the time of the performance of a chemical test  
5 within two hours after the driving or being in actual physical control of a  
6 vehicle.

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

9           **39-20-03.1. Action following test result for a resident operator.** If a person submits  
10 to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have  
11 an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with  
12 respect to a person under twenty-one years of age, an alcohol concentration of at least two  
13 one-hundredths of one percent by weight at the time of the performance of a chemical test  
14 within two hours after the driving or being in actual physical control of a vehicle, the following  
15 procedures apply:

16           1. The law enforcement officer shall immediately take possession of the person's  
17 operator's license if it is then available and shall immediately issue to that person a  
18 temporary operator's permit if the person then has valid operating privileges,  
19 extending driving privileges for the next twenty-five days, or until earlier terminated  
20 by the decision of a hearing officer under section 39-20-05. The law enforcement  
21 officer shall sign and note the date on the temporary operator's permit. The  
22 temporary operator's permit serves as the director's official notification to the  
23 person of the director's intent to revoke, suspend, or deny driving privileges in this  
24 state.

25           2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine  
26 sample or by drawing blood as provided in section 39-20-02 and the person tested  
27 is not a resident of an area in which the law enforcement officer has jurisdiction,  
28 the law enforcement officer shall, on receiving the analysis of the saliva, urine, or  
29 blood from the state toxicologist and if the analysis shows that person had an  
30 alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight  
31 or, with respect to a person under twenty-one years of age, an alcohol

1 concentration of at least two one-hundredths of one percent by weight, either  
2 proceed in accordance with subsection 1 during that person's reappearance within  
3 the officer's jurisdiction or notify a law enforcement agency having jurisdiction  
4 where the person lives. On that notification, that law enforcement agency shall  
5 immediately take possession of the person's North Dakota operator's license or  
6 permit if it is then available and, within twenty-four hours, forward the license and a  
7 copy of the temporary operator's permit to the law enforcement agency making the  
8 arrest or to the director. The law enforcement agency shall also, on taking  
9 possession of the person's operator's license, issue to that person a temporary  
10 operator's permit as provided in this section, and shall sign and date the permit as  
11 provided in subsection 1. The temporary operator's permit serves as the director's  
12 official notification to the person of the director's intent to revoke, suspend, or deny  
13 driving privileges in this state.

14 3. The law enforcement officer, within five days of the issuance of the temporary  
15 operator's permit, shall forward to the director a certified written report in the form  
16 required by the director and the person's operator's license taken under subsection  
17 1 or 2. If the person was issued a temporary operator's permit because of the  
18 results of a test, the report must show that the officer had reasonable grounds to  
19 believe the person had been driving or was in actual physical control of a motor  
20 vehicle while in violation of section 39-08-01, or equivalent ordinance, that the  
21 person was lawfully arrested, that the person was tested for alcohol concentration  
22 under this chapter, and that the results of the test show that the person had an  
23 alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight  
24 or, with respect to a person under twenty-one years of age, an alcohol  
25 concentration of at least two one-hundredths of one percent by weight. In addition  
26 to the operator's license and report, the law enforcement officer shall forward to the  
27 director a certified copy of the operational checklist and test records of a breath  
28 test and a copy of the certified copy of the analytical report for a blood, saliva, or  
29 urine test for all tests administered at the direction of the officer.

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

1           **39-20-03.2. Action following test result or on refusing test by nonresident**

2 **operator.** If a person licensed in another state refuses in this state to submit to a test provided  
3 under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02,  
4 or 39-20-03 and the test results show the person to have an alcohol concentration of at least  
5 ~~ten~~ 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 of one  
7 percent by weight at the time of performance of a test within two hours after driving or being in  
8 physical control of a motor vehicle, the following procedures apply:

- 9           1. Without taking possession of the person's out-of-state operator's license, the law  
10 enforcement officer shall issue to the person a notification of the test results and a  
11 temporary operator's permit extending nonresident operating privileges in this state  
12 for twenty-five days from the date of issuance or until earlier terminated by the  
13 decision of a hearing officer under section 39-20-05. The temporary permit must  
14 be signed and dated by the officer and serves as the director's official notification  
15 to the person of the director's intent to revoke, suspend, or deny driving privileges  
16 in this state, and of the hearing procedures under this chapter.
- 17           2. If the test was administered by saliva or urine sample or by drawing blood, the law  
18 enforcement officer, on reviewing the alcohol concentration analysis showing the  
19 person had an alcohol concentration of at least ~~ten~~ eight one-hundredths of one  
20 percent by weight or, with respect to a person under twenty-one years of age, an  
21 alcohol concentration of at least two one-hundredths of one percent by weight,  
22 shall mail the person a notification of the test results, a temporary operator's permit  
23 extending nonresident operating privileges in this state for twenty-five days from  
24 the date of mailing or until earlier terminated by the decision of a hearing officer  
25 under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving  
26 privileges in this state, together with the notice provided under section 39-06.1-07  
27 of the procedures available under this chapter. The temporary operator's permit  
28 must be signed and dated by the officer.
- 29           3. The law enforcement officer, within five days of issuing the temporary operator's  
30 permit, shall forward to the director a certified written report in the form required by  
31 the director and a certified copy of the operational checklist and test records of a

1 breath test and a copy of the certified copy of the analytical report for a blood,  
2 saliva, or urine test for all tests administered at the direction of the officer. If the  
3 person was issued a temporary operator's permit because of the person's refusal  
4 to submit to a test under sections 39-20-01 and 39-20-14, the report must include  
5 information as provided in section 39-20-04. If the person was issued a temporary  
6 operator's permit because of the results of a test, the report must show that the  
7 officer had reasonable grounds to believe the person had been driving or was in  
8 actual physical control of a motor vehicle while in violation of section 39-08-01, or  
9 equivalent ordinance, that the person was lawfully arrested, that the person was  
10 tested for alcohol concentration under this chapter, and that the results of the test  
11 show that the person had an alcohol concentration of at least ~~ten~~ eight  
12 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.

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

- 17 1. After the receipt of a person's operator's license, if taken under section 39-20-03.1  
18 or 39-20-03.2, and the certified report of a law enforcement officer and if no written  
19 request for hearing has been received from the arrested person under section  
20 39-20-05, or if that hearing is requested and the findings, conclusion, and decision  
21 from the hearing confirm that the law enforcement officer had reasonable grounds  
22 to arrest the person and test results show that the arrested person was driving or in  
23 physical control of a vehicle while having an alcohol concentration of at least ~~ten~~  
24 eight one-hundredths of one percent by weight or, with respect to a person under  
25 twenty-one years of age, an alcohol concentration of at least two one-hundredths  
26 of one percent by weight at the time of the performance of a test within two hours  
27 after driving or being in physical control of a motor vehicle, the director shall  
28 suspend the person's operator's license as follows:
  - 29 a. For ninety-one days if the person's driving record shows that, within the five  
30 years preceding the date of the arrest, the person has not previously violated

- 1 section 39-08-01 or equivalent ordinance or the person's operator's license  
2 has not previously been suspended or revoked under this chapter.
- 3 b. For three hundred sixty-five days if the person's driving record shows that,  
4 within the five years preceding the date of the arrest, the person has once  
5 previously violated section 39-08-01 or equivalent ordinance or the person's  
6 operator's license has once previously been suspended or revoked under this  
7 chapter.
- 8 c. For two years if the person's driving record shows that within the five years  
9 preceding the date of the arrest, the person's operator's license has at least  
10 twice previously been suspended, revoked, or issuance denied under this  
11 chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any  
12 combination thereof, and the suspensions, revocations, or denials resulted  
13 from at least two separate arrests.

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

- 16 2. If the issue to be determined by the hearing concerns license suspension for  
17 operating a motor vehicle while having an alcohol concentration of at least ~~ten~~  
18 eight one-hundredths of one percent by weight or, with respect to a person under  
19 twenty-one years of age, an alcohol concentration of at least two one-hundredths  
20 of one percent by weight, the hearing must be before a hearing officer assigned by  
21 the director and at a time and place designated by the director. The hearing must  
22 be recorded and its scope may cover only the issues of whether the arresting  
23 officer had reasonable grounds to believe the person had been driving or was in  
24 actual physical control of a vehicle in violation of section 39-08-01 or equivalent  
25 ordinance or, with respect to a person under twenty-one years of age, the person  
26 had been driving or was in actual physical control of a vehicle while having an  
27 alcohol concentration of at least two one-hundredths of one percent by weight;  
28 whether the person was placed under arrest, unless the person was under  
29 twenty-one years of age and the alcohol concentration was less than ~~ten~~ eight  
30 one-hundredths of one percent by weight, then arrest is not required and is not an  
31 issue under any provision of this chapter; whether the person was tested in

1 accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02;  
2 and whether the test results show the person had an alcohol concentration of at  
3 least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a  
4 person under twenty-one years of age, an alcohol concentration of at least two  
5 one-hundredths of one percent by weight. For purposes of this section, a copy of a  
6 certified copy of an analytical report of a blood, urine, or saliva sample from the  
7 state toxicologist, or a certified copy of the checklist and test records from a  
8 certified breath test operator establish prima facie the alcohol concentration shown  
9 therein. Whether the person was informed that the privilege to drive might be  
10 suspended based on the results of the test is not an issue.

- 11 5. At the close of the hearing, the hearing officer shall notify the person of the hearing  
12 officer's findings of fact, conclusions of law, and decision based on the findings and  
13 conclusions and shall immediately deliver to the person a copy of the decision. If  
14 the hearing officer does not find in favor of the person, the copy of the decision  
15 serves as the director's official notification to the person of the revocation,  
16 suspension, or denial of driving privileges in this state. If the hearing officer finds,  
17 based on a preponderance of the evidence, that the person refused a test under  
18 section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at  
19 least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a  
20 person under twenty-one years of age, an alcohol concentration of at least two  
21 one-hundredths of one percent by weight, the hearing officer shall immediately  
22 take possession of the person's temporary operator's permit issued under this  
23 chapter. If the hearing officer does not find against the person, the hearing officer  
24 shall sign, date, and mark on the person's permit an extension of driving privileges  
25 for the next twenty days and shall return the permit to the person. The hearing  
26 officer shall report the findings, conclusions, and decisions to the director within ten  
27 days of the conclusion of the hearing. If the hearing officer has determined in favor  
28 of the person, the director shall return the person's operator's license by regular  
29 mail to the address on file with the director under section 39-06-20.

30 **SECTION 7. AMENDMENT.** Subsection 3 of section 39-20-07 of the North Dakota  
31 Century Code is amended and reenacted as follows:

1           3. A person having an alcohol concentration of at least ~~ten~~ eight one-hundredths of  
2           one percent by weight or, with respect to a person under twenty-one years of age,  
3           an alcohol concentration of at least two one-hundredths of one percent by weight  
4           at the time of the performance of a chemical test within two hours after driving or  
5           being in physical control of a vehicle is under the influence of intoxicating liquor at  
6           the time of driving or being in physical control of a vehicle.

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

9           **39-20-09. Effect of evidence of chemical test.** This chapter does not limit the  
10          introduction of any other competent evidence bearing on the question of whether the person  
11          was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the test  
12          results show an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent or,  
13          with respect to a person under twenty-one years of age, an alcohol concentration of at least two  
14          one-hundredths of one percent by weight, the purpose of such evidence must be limited to the  
15          issues of probable cause, whether an arrest was made prior to the administering of the test,  
16          and the validity of the test results.