

HOUSE BILL NO. 1350

Introduced by

Representatives DeKrey, Delmore, Keiser

Senators Heitkamp, Traynor

1 A BILL for an Act to amend and reenact sections 39-20-03.1, 39-20-03.2, 39-20-04.1 and
2 subsections 2 and 5 of section 30-20-05 of the North Dakota Century Code, relating to
3 pre-conviction suspension of motor vehicle operator's licenses based upon chemical test
4 results.

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

6 **SECTION 1. AMENDMENT.** Section 39-20-03.1 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **39-20-03.1. Action following test result for a resident operator under twenty-one**
9 **years of age.** If a person under twenty-one years of age submits to a test under section
10 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol
11 concentration of at least ~~ten one-hundredths of one percent by weight or, with respect to a~~
12 ~~person under twenty-one years of age, an alcohol concentration of at least~~ two one-hundredths
13 of one percent by weight at the time of the performance of a chemical test within two hours after
14 the driving or being in actual physical control of a vehicle, the following procedures apply:

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

- 1 2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine
2 sample or by drawing blood as provided in section 39-20-02 and the person tested
3 is not a resident of an area in which the law enforcement officer has jurisdiction,
4 the law enforcement officer shall, on receiving the analysis of the saliva, urine, or
5 blood from the state toxicologist and if the analysis shows that person had an
6 alcohol concentration of at least ~~ten one hundredths of one percent by weight or,~~
7 ~~with respect to a person under twenty-one years of age, an alcohol concentration~~
8 ~~of at least~~ two one-hundredths of one percent by weight, either proceed in
9 accordance with subsection 1 during that person's reappearance within the officer's
10 jurisdiction or notify a law enforcement agency having jurisdiction where the person
11 lives. On that notification, that law enforcement agency shall immediately take
12 possession of the person's North Dakota operator's license or permit if it is then
13 available and, within twenty-four hours, forward the license and a copy of the
14 temporary operator's permit to the law enforcement agency making the arrest or to
15 the director. The law enforcement agency shall also, on taking possession of the
16 person's operator's license, issue to that person a temporary operator's permit as
17 provided in this section, and shall sign and date the permit as provided in
18 subsection 1. The temporary operator's permit serves as the director's official
19 notification to the person of the director's intent to revoke, suspend, or deny driving
20 privileges in this state.
- 21 3. The law enforcement officer, within five days of the issuance of the temporary
22 operator's permit, shall forward to the director a certified written report in the form
23 required by the director and the person's operator's license taken under subsection
24 1 or 2. If the person was issued a temporary operator's permit because of the
25 results of a test, the report must show that the officer had reasonable grounds to
26 believe the person had been driving or was in actual physical control of a motor
27 vehicle while in violation of section 39-08-01, or equivalent ordinance, that the
28 person was under twenty-one years of age at the time of driving or actual physical
29 control, that the person was lawfully arrested, that the person was tested for
30 alcohol concentration under this chapter, and that the results of the test show that
31 the person had an alcohol concentration of at least ~~ten one hundredths of one~~

1 ~~percent by weight or, with respect to a person under twenty one years of age, an~~
2 ~~alcohol concentration of at least two one-hundredths of one percent by weight.~~ In
3 addition to the operator's license and report, the law enforcement officer shall
4 forward to the director a certified copy of the operational checklist and test records
5 of a breath test and a copy of the certified copy of the analytical report for a blood,
6 saliva, or urine test for all tests administered at the direction of the officer.

7 **SECTION 2. AMENDMENT.** Section 39-20-03.2 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **39-20-03.2. Action following test result from nonresident operator under**
10 **twenty-one years of age or on refusing test by nonresident operator.** If a person licensed
11 in another state refuses in this state to submit to a test provided under section 39-20-01 or
12 39-20-14, or with respect to a person under twenty-one years of age and licensed in another
13 state who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results
14 show the person to have an alcohol concentration of at least ~~ten one hundredths of one percent~~
15 ~~by weight or, with respect to a person under twenty one years of age, an alcohol concentration~~
16 ~~of at least two one-hundredths of one percent by weight~~ at the time of performance of a test
17 within two hours after driving or being in physical control of a motor vehicle, the following
18 procedures apply:

- 19 1. Without taking possession of the person's out-of-state operator's license, the law
20 enforcement officer shall issue to the person a notification of the test results and a
21 temporary operator's permit extending nonresident operating privileges in this state
22 for twenty-five days from the date of issuance or until earlier terminated by the
23 decision of a hearing officer under section 39-20-05. The temporary permit must
24 be signed and dated by the officer and serves as the director's official notification
25 to the person of the director's intent to revoke, suspend, or deny driving privileges
26 in this state, and of the hearing procedures under this chapter.
- 27 2. If the test was administered by saliva or urine sample or by drawing blood, the law
28 enforcement officer, on reviewing the alcohol concentration analysis showing the
29 person had an alcohol concentration of at least ~~ten one hundredths of one percent~~
30 ~~by weight or, with respect to a person under twenty one years of age, an alcohol~~
31 ~~concentration of at least two one-hundredths of one percent by weight,~~ shall mail

1 the person a notification of the test results, a temporary operator's permit extending
2 nonresident operating privileges in this state for twenty-five days from the date of
3 mailing or until earlier terminated by the decision of a hearing officer under section
4 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in
5 this state, together with the notice provided under section 39-06.1-07 of the
6 procedures available under this chapter. The temporary operator's permit must be
7 signed and dated by the officer.

8 3. The law enforcement officer, within five days of issuing the temporary operator's
9 permit, shall forward to the director a certified written report in the form required by
10 the director and a certified copy of the operational checklist and test records of a
11 breath test and a copy of the certified copy of the analytical report for a blood,
12 saliva, or urine test for all tests administered at the direction of the officer. If the
13 person was issued a temporary operator's permit because of the person's refusal
14 to submit to a test under sections 39-20-01 and 39-20-14, the report must include
15 information as provided in section 39-20-04. If the person was issued a temporary
16 operator's permit because of the results of a test, the report must show that the
17 officer had reasonable grounds to believe the person had been driving or was in
18 actual physical control of a motor vehicle while in violation of section 39-08-01, or
19 equivalent ordinance, that the person was under twenty-one years of age at the
20 time of driving or actual physical control, that the person was lawfully arrested, that
21 the person was tested for alcohol concentration under this chapter, and that the
22 results of the test show that the person had an alcohol concentration of at least ~~ten~~
23 ~~one hundredths of one percent by weight or, with respect to a person under~~
24 ~~twenty one years of age, an alcohol concentration of at least two one-hundredths~~
25 of one percent by weight.

26 **SECTION 3. AMENDMENT.** Section 39-20-04.1 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **39-20-04.1. Administrative sanction for a person under twenty-one years of age**
29 **driving or being in physical control of a vehicle while having certain alcohol**
30 **concentration.**

- 1 1. After the receipt of a person's operator's license, if taken under section 39-20-03.1
2 or 39-20-03.2, and the certified report of a law enforcement officer and if no written
3 request for hearing has been received from the arrested person under section
4 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
5 from the hearing confirm that the law enforcement officer had reasonable grounds
6 to arrest the person, that the person was under twenty-one years of age at the time
7 of driving or actual physical control, and test results show that the arrested person
8 was driving or in physical control of a vehicle while having an alcohol concentration
9 of at least ~~ten one hundredths of one percent by weight or, with respect to a~~
10 ~~person under twenty-one years of age, an alcohol concentration of at least two~~
11 one-hundredths of one percent by weight at the time of the performance of a test
12 within two hours after driving or being in physical control of a motor vehicle, the
13 director shall suspend the person's operator's license as follows:
- 14 a. For ninety-one days if the person's driving record shows that, within the five
15 years preceding the date of the arrest, the person has not previously violated
16 section 39-08-01 or equivalent ordinance or the person's operator's license
17 has not previously been suspended or revoked under this chapter.
- 18 b. For three hundred sixty-five days if the person's driving record shows that,
19 within the five years preceding the date of the arrest, the person has once
20 previously violated section 39-08-01 or equivalent ordinance or the person's
21 operator's license has once previously been suspended or revoked under this
22 chapter.
- 23 c. For two years if the person's driving record shows that within the five years
24 preceding the date of the arrest, the person's operator's license has at least
25 twice previously been suspended, revoked, or issuance denied under this
26 chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any
27 combination thereof, and the suspensions, revocations, or denials resulted
28 from at least two separate arrests.
- 29 2. In the suspension of the person's operator's license the director shall give credit for
30 the time the person was without an operator's license after the day of the offense,
31 except that the director may not give credit for the time the person retained driving

1 privileges through a temporary operator's permit issued under section 39-20-03.1
2 or 39-20-03.2.

3 **SECTION 4. AMENDMENT.** Subsections 2 and 5 of section 39-20-05 of the North
4 Dakota Century Code is amended and reenacted as follows:

5 **39-20-05. Administrative hearing on request.**

6 2. If the issue to be determined by the hearing with respect to a person under
7 twenty-one years of age concerns license suspension for operating a motor vehicle
8 while having an alcohol concentration of at least ~~ten one-hundredths of one~~
9 ~~percent by weight or, with respect to a person under twenty one years of age, an~~
10 ~~alcohol concentration of at least two one-hundredths of one percent by weight, the~~
11 hearing must be before a hearing officer assigned by the director and at a time and
12 place designated by the director. The hearing must be recorded and its scope may
13 cover only the issues of whether the arresting officer had reasonable grounds to
14 believe the person had been driving or was in actual physical control of a vehicle in
15 violation of section 39-08-01 or equivalent ordinance or, ~~with respect to a person~~
16 ~~under twenty one years of age, the person had been driving or was in actual~~
17 physical control of a vehicle while having an alcohol concentration of at least two
18 one-hundredths of one percent by weight; ~~whether the person was placed under~~
19 ~~arrest, unless the person was under twenty one years of age and the alcohol~~
20 ~~concentration was less than ten one hundredths of one percent by weight, then~~
21 ~~arrest is not required and is not an issue under any provision of this chapter;~~
22 whether the person was tested in accordance with section 39-20-01 or 39-20-03
23 and, if applicable, section 39-20-02; and whether the test results show the person
24 had an alcohol concentration of at least ~~ten one-hundredths of one percent by~~
25 ~~weight or, with respect to a person under twenty one years of age, an alcohol~~
26 ~~concentration of at least two one-hundredths of one percent by weight. An arrest~~
27 ~~is not required and is not an issue at the hearing.~~ For purposes of this section, a
28 copy of a certified copy of an analytical report of a blood, urine, or saliva sample
29 from the state toxicologist, or a certified copy of the checklist and test records from
30 a certified breath test operator establish prima facie the alcohol concentration

1 shown therein. Whether the person was informed that the privilege to drive might
2 be suspended based on the results of the test is not an issue.

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