Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

HOUSE BILL NO. 1534
(Representatives K. Koppelman, Hanson, Paur)
(Senators Dwyer, Rust)

AN ACT to amend and reenact subsections 1 and 2 of section 39-08-01, section 39-20-01, and subsection 1 of section 39-20-14 of the North Dakota Century Code, relating to driving under the influence of intoxicating liquor or any other drugs or substances, implied consent, and screening tests; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

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

   b. That person is under the influence of intoxicating liquor.

   c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.

   d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

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

      (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or

      (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

   <u>f. Subdivision e does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.</u>

   The fact ~~that~~ any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section~~, unless~~<u>. It is an affirmative defense that</u> a drug ~~which predominately caused impairment~~ was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are

deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

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

2. ~~a.~~ An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2~~,~~ or 39-20-01~~, or 39-20-14~~, is guilty of an offense under this section.

   ~~b. An individual is not subject to an offense under this section for refusal to submit to an onsite screening test under section 39-20-14 if the person submits to a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident. Upon the individual's refusal to submit to an onsite screening test, the police officer shall inform the individual that the individual may remedy the refusal if the individual takes a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident.~~

SECTION 3. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

39-20-01. Implied consent to determine alcohol concentration and presence of drugs.

1. Any individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, saliva, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, saliva, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders an individual incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter.

2. The test or tests must be administered at the direction of a law enforcement officer only after placing the individual under arrest ~~and informing that individual that the individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof~~for violation of section 39-08-01 or an equivalent offense. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or an individual under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall determine which of the tests is to be used.

3. a. The law enforcement officer shall inform the individual ~~charged that~~ North Dakota law requires the individual to take a chemical test to determine whether the individual is under the influence of alcohol or drugs and ~~that~~ refusal of the individual to submit to a test directed by the law enforcement officer may result in a revocation of the individual's driving privileges for a minimum of one hundred eighty days and up to three years. ~~In addition, the law enforcement officer shall inform the individual refusal to take a breath or urine test is a crime punishable in the same manner as driving under the influence. If the officer requests the individual to submit to a blood test, the officer may not inform the individual of any criminal penalties until the officer has first secured a search warrant.~~

   b. ~~A test administered under this section~~If an individual refuses to submit to testing under this section, proof of the refusal is not admissible in any ~~criminal or~~ administrative proceeding ~~to determine a violation of section 39-08-01 or~~under this chapter if the law enforcement officer fails to inform the individual ~~charged~~ as required under subdivision a.

4. When an individual under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the individual's parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the individual in custody.

SECTION 4. AMENDMENT. Subsection 1 of section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

1. Any individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the individual's breath for the purpose of estimating the alcohol concentration in the individual's breath upon the request of a law enforcement officer who has reason to believe that the individual committed a moving traffic violation <u>or a violation under section 39-08-01 or an equivalent offense,</u> or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the individual's body contains alcohol.

SECTION 5. EMERGENCY. Sections 1 and 2 of this Act are declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1534 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 93 Nays 0 Absent 1

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 0

President of the Senate

Secretary of the Senate

Received by the Governor at 3:39 P.M. on April 5, 2019.

Approved at 4:26 P.M. on April 8, 2019.

Governor

Filed in this office this 9th day of April, 2019,

at 9:48 o'clock A. M.

Secretary of State