

# MOTOR VEHICLES

## CHAPTER 307

### SENATE BILL NO. 2213

(Senators Espegard, Heitkamp)  
(Representatives Delmore, Weisz)

## MOTOR VEHICLE DEFINITIONS AND WIDTH RESTRICTIONS

AN ACT to create and enact three new subsections to section 39-01-01 and a new subsection to section 39-12-04 of the North Dakota Century Code, relating to definitions of motor vehicles and the width of motor vehicles; and to amend and reenact subsections 25 and 84 of section 39-01-01 of the North Dakota Century Code, relating to the definitions of house car and travel trailer.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>132</sup> **SECTION 1.** Three new subsections to section 39-01-01 of the North Dakota Century Code are created and enacted as follows:

"Camping trailer" means a vehicular portable unit mounted on wheels and constructed with collapsible partial side walls that fold for towing by another vehicle and unfold at the campsite to provide temporary living quarters for recreational, camping, or travel use.

"Fifth-wheel travel trailer" means a vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, of such size or weight as not to require a special highway movement permit and designed to be towed by a motorized vehicle that contains a towing mechanism that is mounted above or forward of the tow vehicle's rear axle.

"Truck camper" means a portable unit that is constructed to provide temporary living quarters for recreational, camping, or travel use; consists of a roof, floor, and sides; and is designed to be loaded onto and unloaded from the bed of a pickup truck.

<sup>133</sup> **SECTION 2. AMENDMENT.** Subsections 25 and 84 of section 39-01-01 of the North Dakota Century Code are amended and reenacted as follows:

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<sup>132</sup> Section 39-01-01 was also amended by section 3 of Senate Bill No. 2150, chapter 322, and section 2 of Senate Bill No. 2213, chapter 307.

<sup>133</sup> Section 39-01-01 was also amended by section 1 of Senate Bill No. 2213, chapter 307, and section 3 of Senate Bill No. 2150, chapter 322.

25. "House car" or "motor home" means a motor vehicle which has been reconstructed or manufactured primarily for private use as a temporary or recreational dwelling and having at least four of the following permanently installed systems:
- a. Cooking facilities.
  - b. Icebox or mechanical refrigerator.
  - c. Potable water supply including plumbing and a sink with faucet either self-contained or with connections for an external source, or both.
  - d. Self-contained toilet or a toilet connected to a plumbing system with connection for external water disposal, or both.
  - e. Heating or air-conditioning system, or both, separate from the vehicle engine or the vehicle engine electrical system.
  - f. A 110-115 volt alternating current electrical system separate from the vehicle engine electrical system either with its own power supply or with a connection for an external source, or both, or a liquefied petroleum system and supply.
84. "Travel trailer" means a ~~mobile home or housetrailer designed to be towed behind a motor vehicle for recreational purposes and providing temporary sleeping quarters for people~~ vehicular unit mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require a special highway movement permit when towed by a motorized vehicle.

<sup>134</sup> **SECTION 3.** A new subsection to section 39-12-04 of the North Dakota Century Code is created and enacted as follows:

Motor homes, house cars, travel trailers, fifth-wheel travel trailers, camping trailers, and truck campers may exceed eight feet six inches [2.59 meters] in width if the excess is attributable to an appurtenance that extends beyond the body of the vehicle no more than six inches [15.24 centimeters] on either side of the vehicle. For purposes of this subsection, the term appurtenance includes a shade awning and its support hardware, and any appendage that is intended to be an integral part of a motor home, house car, travel trailer, fifth-wheel travel trailer, camping trailer, or truck camper.

Approved March 19, 2003  
Filed March 19, 2003

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<sup>134</sup> Section 39-12-04 was also amended by section 1 of House Bill No. 1062, chapter 331, and section 2 of House Bill No. 1261, chapter 310.

## CHAPTER 308

### SENATE BILL NO. 2059

(Government and Veterans Affairs Committee)  
(At the request of the Public Employees Retirement System)

## HIGHWAY PATROLMEN'S RETIREMENT SERVICE AND CONTRIBUTIONS

AN ACT to create and enact two new sections to chapter 39-03.1 of the North Dakota Century Code, relating to Internal Revenue Code compliance and employer service purchases under the highway patrolmen's retirement system; to amend and reenact section 39-03.1-08.2, subsection 2 of section 39-03.1-09, and sections 39-03.1-14.1 and 39-03.1-28 of the North Dakota Century Code, relating to the purchase of additional service credit, employer payment of employee contributions multiple plan membership, and confidentiality requirements under the highway patrolmen's retirement system; and to repeal section 39-03.1-11.1 of the North Dakota Century Code, relating to benefit limitations under the highway patrolmen's retirement system.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-03.1-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-08.2. (Contingent expiration date - See note) Purchase of additional service credit.**

1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.
3. A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.
4. ~~A participating contributor who is a vested permanent employee is entitled to purchase additional years of service credit for purposes of subsection 4 of section 39-03.1-14 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-14. The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue~~

Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a vested member may purchase up to five years of service credit.

**(Contingent effective date - See note) Purchase of additional service credit.**

1. The fund may accept rollovers from other ~~qualified~~ eligible plans under rules adopted by the board for the purchase of additional service credit, but only to the extent the transfer is a rollover contribution that meets the requirement of section 408 of the Internal Revenue Code [26 U.S.C. 408].
2. Except as provided in subsection 3 of section 39-03.1-10.1, a contributor is entitled to purchase additional credit under this section for active employment in the armed forces of the United States, for up to four years of credit, if the contributor is not presently receiving credit for that service. A contributor may not purchase credit under this subsection if the years claimed also qualify for retirement benefits from another retirement system.
3. A contributor may elect to purchase credit for an employer-approved leave of absence if the contributor is not presently receiving credit for that absence.
4. ~~A participating contributor who is a vested permanent employee is entitled to purchase additional years of service credit for purposes of subsection 4 of section 39-03.1-14 and to enable the contributor to qualify for the normal retirement date defined by subdivision b of subsection 3 of section 39-03.1-14.~~ The board may accept trustee-to-trustee transfers as permitted by Internal Revenue Code section 403(b)(13) and section 457(e)(17) from an Internal Revenue Code section 403(b) annuity or Internal Revenue Code section 457 deferred compensation plan for the purchase of permissive service credit, as defined in Internal Revenue Code section 415(n)(3)(A), or as repayment of a cashout from a governmental plan under Internal Revenue Code section 415(k)(3).

5. The contributor may purchase credit under this section by paying to the board an amount equal to the actuarial cost to the fund of providing the credit. The board shall adopt rules governing the purchase of additional credit under this section.
6. The board may establish individual retirement accounts and individual retirement annuities as permitted under section 408(q) of the Internal Revenue Code to allow employees to make voluntary employee contributions. The board may adopt appropriate rules as may be necessary to implement and administer the accounts and annuities under this section.
7. In addition to service credit identified in this section, a member may purchase up to five years of service credit.
8. Pursuant to rules adopted by the board, the board may allow a member to purchase service credit with either pretax or aftertax moneys, at the board's discretion. If a member elects to purchase service credit using pretax moneys, the requirements and restrictions in subsection 2 of section 39-03.1-09 apply to the purchase arrangement.

**SECTION 2. AMENDMENT.** Subsection 2 of section 39-03.1-09 of the North Dakota Century Code is amended and reenacted as follows:

2. The state of North Dakota, at its option, may pay the member contributions required by subsection 1 for all compensation earned after June 30, 1983, and may pay the member contributions required to purchase service credit on a pretax basis pursuant to subsection 8 of section 39-03.1-08.2. The amount paid ~~shall~~ must be paid by the state in lieu of contributions by the member. A member may not receive the contributed amounts directly once the employer has elected to pay the member contributions. If the state decides not to pay the contributions, the amount that would have been paid will continue to be deducted from compensation. If contributions are paid by the state, they must be treated as employer contributions in determining tax treatment under this code and the federal Internal Revenue Code. If contributions are paid by the state, they must not be included as gross income of the member in determining tax treatment under this code and the Internal Revenue Code until they are distributed or made available. The state shall pay these member contributions from the same source of funds used in paying compensation to the members. The state shall pay these contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases or by a combination of a reduction in gross salary and offset against future salary increases. If member contributions are paid by the state, they must be treated for the purposes of this chapter in the same manner and to the same extent as member contributions made prior to the date the contributions were assumed by the state. The option given employers by this subsection must be exercised in accordance with rules adopted by the board.

**SECTION 3.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Employer service purchases.** An employer may purchase additional service credit on behalf of a contributor under the following conditions:

1. The contributor may not be given the option to choose between an employer service purchase and an equivalent amount paid in cash.
2. The contributor must meet one of the following conditions at the time the purchase is made:
  - a. The contributor's age plus service credit must be equal to or greater than seventy; or
  - b. The contributor's age must be at least fifty and the contributor must have at least ten years of service credit.
3. The board must determine the purchase price on an actuarially equivalent basis.
4. The purchase must be completed before the contributor's retirement.
5. The employer may purchase a maximum of five years of service credit on behalf of the contributor.
6. The employer must pay the purchase price for the service credit purchased under this section in a lump sum.

**SECTION 4.** A new section to chapter 39-03.1 of the North Dakota Century Code is created and enacted as follows:

**Internal Revenue Code compliance.** The board shall administer the plan in compliance with section 415, section 401(a)(9), section 401(a)(17), and section 401(a)(31) of the Internal Revenue Code as it applies for governmental plans.

**SECTION 5. AMENDMENT.** Section 39-03.1-14.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-14.1. Multiple plan membership - Eligibility for benefits - Amount of benefits.**

1. ~~a.~~ For the purpose of determining eligibility for benefits under this chapter, a member's years of service is the total of the years of service earned under this chapter and the years of service employment or years of service credit earned in any number of the following, the total of which may not exceed twelve months of credit per year:
  - ~~(1)~~ a. The public employees retirement system.
  - ~~(2)~~ b. The teachers' fund for retirement.
  - c. The teachers' insurance and annuity association of America - college retirement equities fund (TIAA-CREF), for service credit earned while employed by North Dakota institutions of higher education.
- ~~b.~~ 2. If a member terminates eligible employment under this chapter, if that member has not received a refund of the member's accumulated deductions, and if that member begins eligible employment in a plan described in ~~paragraph 1~~ subdivision a or ~~2~~ b of ~~subdivision a~~

subsection 1, that member may elect to remain an inactive member of the system without refund of the member's accumulated deductions. The election must be made within ninety days after beginning the eligible employment ~~or by October 1, 1987, whichever is later~~. The board shall terminate the inactive status of a member under this subdivision if the member gains eligible employment under this chapter or if the member terminates eligible employment under a plan described in paragraph 4 subdivision a or 2 b of subdivision a subsection 1.

- e. 3. A Pursuant to rules adopted by the board, a member who has service credit in the system and in any number of the alternate plans described in paragraphs 4 and 2 subdivision a or b of subdivision a subsection 1 is entitled to benefits under this chapter; The employee may elect to have benefits calculated by using the certified salaries of the retirement plan of last membership using the benefit formula in section 39-03.1-11 under either of the following calculation methods:
- a. By using the average of the highest salary received by the member for any consecutive thirty-six months employed during the last one hundred twenty months of employment in the highway patrolmen's retirement system. If the participating member has worked for less than thirty-six months at retirement, the final average salary is the average salary for the total months of employment.
  - b. Using the average of the highest salary received by the member for any thirty-six consecutive months during the last one hundred twenty months of employment, with service credit not to exceed one month in any month when combined with the service credit earned in the alternate retirement system.

The board shall calculate benefits for an employee under this subsection by using only those years of service employment earned under this chapter.

2. ~~Under rules adopted by the board, an individual whose service credit was canceled when that individual received a refund of assessments at termination of employment under this chapter may, while that individual participates in a plan described in paragraph 4 or 2 of subdivision a of subsection 1, repurchase that service credit that was canceled.~~

**SECTION 6. AMENDMENT.** Section 39-03.1-28 of the North Dakota Century Code is amended and reenacted as follows:

**39-03.1-28. Confidentiality of records.** ~~Information pertaining to a contributor's accumulated deductions, disability applications and benefits, and surviving spouse applications and benefits under this chapter is confidential and is not a public record.~~ All records relating to the retirement benefits of a member or a beneficiary under this chapter are confidential and are not public records. The information and records may be disclosed, under rules adopted by the board only to:

1. A person to whom the ~~contributor~~ member has given written consent to have the information disclosed.
2. A person legally representing the ~~contributor~~ member, upon proper proof of representation, and unless the ~~contributor~~ member specifically withholds consent.

3. A person authorized by a court order.
4. A member's participating employer, limited to information concerning the member's years of service credit and years of age. The board may share other types of information as needed by the employer to validate the employer's compliance with existing state or federal laws. Any information provided to the member's participating employer under this subsection must remain confidential except as provided under subsection 6.
5. The administrative staff of the retirement and investment office for purposes relating to membership and benefits determination.
6. State or federal agencies for purposes of reporting on a service provider's provision of services or when the employer must supply information to an agency to validate the employer's compliance with existing state or federal laws.
7. Member interest groups approved by the board on a third-party blind list basis, limited to information concerning the member's participation, name, and address.
8. The member's spouse or former spouse, that individual's legal representative, and the judge presiding over the member's dissolution proceeding for purposes of aiding the parties in drafting a qualified domestic relations order under section 39-03.1-14.2. The information disclosed under this subsection must be limited to information necessary for drafting the order.
9. Beneficiaries designated by a participating member or a former participating member to receive benefits after the member's death, but only after the member's death.
10. Any person if the board determines disclosure is necessary for treatment, operational, or payment purposes, including the completion of necessary documents.

**SECTION 7. REPEAL.** Section 39-03.1-11.1 of the North Dakota Century Code is repealed.

Approved March 26, 2003  
Filed March 26, 2003

**CHAPTER 309****HOUSE BILL NO. 1299**

(Representatives Pollert, Delmore, D. Johnson)

(Senators Erbele, Klein, Taylor)

**FFA FOUNDATION LICENSE PLATES**

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to North Dakota FFA foundation number plates.

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

**SECTION 1.** A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

**North Dakota FFA foundation number plates.** The director shall design a decorative decal that contains the insignia of the North Dakota FFA foundation to be placed on a distinctive number plate. On payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional fee of ten dollars, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decals and plates to the owner of a passenger motor vehicle or a truck the gross weight of which equals or exceeds ten thousand pounds [4535.92 kilograms].

Approved March 27, 2003

Filed March 28, 2003

## CHAPTER 310

### HOUSE BILL NO. 1261 (Representatives Froelich, D. Johnson)

## OVERSIZED VEHICLES ON HIGHWAYS

AN ACT to amend and reenact subdivision h of subsection 2 of section 39-04-18 and section 39-12-04 of the North Dakota Century Code, relating to the width of forage harvesters and the registration of nonresident harvest vehicles; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subdivision h of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- h. Motor vehicles owned and operated by nonresidents engaged in harvest of agricultural products from ~~July fifteenth~~ June first through December thirty-first of any one year; provided, however, that such motor vehicles have displayed thereon a decal or other means of identification issued by the director upon payment of a fee of fifty dollars.

<sup>135</sup> **SECTION 2. AMENDMENT.** Section 39-12-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-12-04. Width, height, and length limitations on vehicles - Exceptions.**

1. Vehicles operated on a highway in this state may not exceed ~~the following width, height, or length limitations:~~
- ~~4.~~ A a total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
  - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
  - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.

<sup>135</sup> Section 39-12-04 was also amended by section 3 of Senate Bill No. 2213, chapter 307, and section 1 of House Bill No. 1062, chapter 331.

- c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
  - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, commercial movement of forage harvesters, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.
  - e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
  - f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
  - g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.
2. a. A Vehicles operated on a highway in this state may not exceed a height of fourteen feet [4.27 meters], whether loaded or unloaded. This height limitation does not affect any present structure such as bridges and underpasses that are not fourteen feet [4.27 meters] in height.
- b. ~~The~~ This limitation in subdivision a does not apply to vehicles that are at most fifteen feet six inches [4.72 meters] high when all of the following apply:

- (1) a. The vehicle is an implement of husbandry and is being moved by a resident farmer, rancher, dealer, or manufacturer.
  - (2) b. The trip is at most sixty miles [96.56 kilometers].
  - (3) c. The trip is between sunrise and sunset.
  - (4) d. None of the trip is on an interstate highway.
3. A length limitation as follows vehicle operated on a highway in this state may not exceed the following length limitations:
- a. A single unit vehicle with two or more axles including the load thereon may not exceed a length of fifty feet [15.24 meters].
  - b. A combination of two units including the load thereon may not exceed a length of seventy-five feet [22.86 meters].
  - c. A combination of three or four units including the load thereon may not exceed a length of seventy-five feet [22.86 meters], subject to any rules adopted by the director that are consistent with public highway safety. The rules do not apply to a three-unit combination consisting of a truck tractor and semitrailer drawing a trailer or semitrailer.
  - d. A combination of two, three, or four units including the load thereon may be operated on all four-lane divided highways and those highways in the state designated by the director and local authorities as to the highways under their respective jurisdictions and may not exceed a length of one hundred ten feet [33.53 meters], subject to any rules adopted by the director that are consistent with public highway safety.
  - e. The length of a trailer or semitrailer, including the load thereon, may not exceed fifty-three feet [16.5 meters] except that trailers and semitrailers titled and registered in North Dakota before July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].
4. Length limitations do not apply to:
- (1) a. Building moving equipment.
  - (2) b. Emergency tow trucks towing disabled lawful combinations of vehicles to a nearby repair facility.
  - (3) c. Vehicles and equipment owned and operated by the armed forces of the United States or the national guard of this state.
  - (4) d. Structural material of telephone, power, and telegraph companies.
  - (5) e. Truck-mounted haystack moving equipment, provided ~~such~~ the equipment does not exceed a length of fifty-six feet [17.07 meters].
  - (6) f. A truck tractor and semitrailer or truck tractor, semitrailer, and the trailer when operated on the interstate highway system or parts of

the federal aid primary system as designated by the director, only when federal law requires the exemption.

- (7) g. Safety and energy conservation devices and any additional length exclusive devices as determined by the highway patrol for the safe and efficient operation of commercial motor vehicles. Length exclusive devices are appurtenances at the front or rear of a commercial motor vehicle semitrailer or trailer, whose function is related to the safe and efficient operation of the semitrailer or trailer.
- f. ~~The length of a trailer or semitrailer, including the load thereon, may not exceed fifty three feet [16.15 meters] except that trailers and semitrailers titled and registered in North Dakota prior to July 1, 1987, and towed vehicles may not exceed a length of sixty feet [18.29 meters].~~

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 27, 2003  
Filed March 28, 2003

**CHAPTER 311****SENATE BILL NO. 2105**

(Transportation Committee)

(At the request of the Department of Transportation)

**CERTIFICATE OF TITLE SUSPENSION OR  
REVOCATION**

AN ACT to amend and reenact subsection 1 of section 39-05-09.2 of the North Dakota Century Code, relating to grounds for suspension or revocation of a motor vehicle certificate of title.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-05-09.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The department shall suspend or revoke a certificate of title, upon notice and reasonable opportunity to be heard in accordance with chapter 28-32, when authorized by any other provision of law or if it finds:
  - a. The certificate of title was fraudulently procured or erroneously issued; ~~or~~
  - b. The vehicle has been scrapped, dismantled, destroyed; or
  - c. A person has acquired a vehicle but has failed to transfer the ownership as required by this chapter.

Approved March 12, 2003  
Filed March 12, 2003

## CHAPTER 312

### SENATE BILL NO. 2149

(Transportation Committee)

(At the request of the Department of Transportation)

## LICENSING OF DRIVERS

AN ACT to amend and reenact sections 39-06-13 and 39-06-32, subdivision b of subsection 5 of section 39-06.1-03, subsection 17 of section 39-06.2-02, sections 39-06.2-06 and 39-06.2-16, subsection 3 of section 39-08-13, and section 39-16.1-10 of the North Dakota Century Code, relating to examination of applicants, evidence of actions against drivers received from other jurisdictions, issuance of a temporary certificate after granting a stay pending appeal, definition of gross vehicle weight rating, seasonal exemption from commercial driver's license requirements, time for submission of accident reports by law enforcement, and proof of future financial responsibility by nonresidents.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-06-13 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-13. Examination of applicants.** The director shall examine every applicant for an operator's license, except as otherwise provided in this chapter. The examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. During testing, any written portion of the examination, except writing on illustrations of signs, must be made available to an applicant in any widely practiced language. The director may waive the written portion of the examination for an applicant who has successfully passed a written examination in another state and has a license that is not revoked, suspended, or canceled or in the process of being revoked, suspended, or canceled. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for an applicant who has successfully passed an actual ability test in this or another state. Operators' examinations must be given at locations designated by the director. The director may require any other physical or mental examination.

<sup>136</sup> **SECTION 2. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-32. Authority to suspend licenses.** The director may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

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<sup>136</sup> Section 39-06-32 was also amended by section 1 of House Bill No. 1161, chapter 316.

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.
7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10. For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the drivers licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

8. Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

**SECTION 3. AMENDMENT.** Subdivision b of subsection 5 of section 39-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

- b. The appellate court upon application by the appellant may:
  - (1) Order a stay of any action by the licensing authority during pendency of the appeal, but not to exceed a period of one hundred twenty days;
  - (2) Order a stay and that the appellant be issued a temporary restricted driving certificate by the licensing authority to be effective for no more than one hundred twenty days; or
  - (3) Deny the application.

An application for a stay or temporary certificate under this subdivision must be accompanied by a certified copy of the appellant's driving record, for the furnishing of which the licensing authority may charge a fee of ~~two~~ three dollars. Any order granting a stay or a temporary certificate must be forwarded forthwith by the clerk of court to the licensing authority, which immediately shall issue a temporary certificate in accordance with the order in the manner provided by law. A court may not make a determination on an application under this subdivision without notice to the appropriate prosecuting attorney. A person who violates or exceeds the restrictions contained in any temporary restricted driving certificate issued pursuant to this subdivision is guilty of a traffic violation and must be assessed a fee of twenty dollars.

<sup>137</sup> **SECTION 4. AMENDMENT.** Subsection 17 of section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

17. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, ~~or registered gross weight, whichever is greater.~~ The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating or actual weight of the towed unit or units.

**SECTION 5. AMENDMENT.** Section 39-06.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-06. Commercial driver's license required.**

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<sup>137</sup> Section 39-06.2-02 was also amended by section 4 of Senate Bill No. 2150, chapter 322.

1. Except when driving under a commercial driver's instruction permit and accompanied by the holder of a commercial driver's license valid for the vehicle being driven, no person may drive a commercial motor vehicle on the highways of this state unless the person holds and is in immediate possession of a commercial driver's license with applicable endorsements valid for the vehicle the person is driving. This subsection does not apply:
  - a. When the vehicle being driven is a house car or a vehicle towing a travel trailer being used solely for personal rather than commercial purposes.
  - b. When the vehicle being driven constitutes emergency or firefighting equipment necessary to the preservation of life or property.
2. No person may drive a commercial motor vehicle on the highways of this state while the person's driving privilege is suspended, revoked, or canceled, while subject to a disqualification.
3. The provisions of this chapter are waived, as to farm-to-market operations by farmers, but limited to those operators of a farm vehicle that is:
  - a. Controlled and operated by a farmer.
  - b. Used to transport either agricultural products, farm machines, farm supplies, or both, to or from a farm.
  - c. Not used in the operations of a common or contract carrier.
  - d. Used within one hundred fifty miles [241.40 kilometers] of the person's farm.
4. The provisions of this chapter are waived as to an individual operating a vehicle at the request of and within a political subdivision during an emergency declared by that political subdivision for the removal of snow and ice.
5. Pursuant to 49 CFR, part 383.3, the required knowledge and skills tests may be waived and a restricted commercial driver's license issued to employees of agrichemical businesses, custom harvesters, farm retail outlets and suppliers, and livestock feeders.

**SECTION 6. AMENDMENT.** Section 39-06.2-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-16. Reciprocity.**

1. Notwithstanding any other provision of law, a person may drive a commercial motor vehicle in this state if the person has a valid commercial driver's license or commercial driver's license instruction permit issued by any state, or province or territory of Canada, in accordance with the minimum federal standards for the issuance of a commercial motor vehicle driver's license, if the person's license or permit is not suspended, revoked, or canceled, and if the person is not disqualified from driving a commercial motor vehicle.

2. The director must give all out-of-state convictions full faith and credit and treat them for sanctioning purposes under this chapter as if they occurred in this state. ~~Certified copies of the records of the other state's driver's licensing authority are sufficient evidence of the conviction.~~ For purposes of this section, originals, photostatic copies, or electronic transmissions of the records of the driver's licensing or other authority of the other jurisdiction are sufficient evidence whether or not they are certified copies.

**SECTION 7. AMENDMENT.** Subsection 3 of section 39-08-13 of the North Dakota Century Code is amended and reenacted as follows:

3. Every law enforcement officer who investigates a vehicle accident for which a report must be made as required in this chapter shall forward a report of such accident to the department within ~~five~~ ten days after ~~investigation of~~ the accident.

**SECTION 8. AMENDMENT.** Section 39-16.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**39-16.1-10. Nonresident owner.**

1. The nonresident owner of a motor vehicle not registered in this state may give proof of financial responsibility by filing with the director a written or electronically transmitted certificate of an insurance carrier authorized to transact business in the state in which the motor vehicle or motor vehicles described in ~~such~~ the certificate is registered, or if ~~such~~ the nonresident does not own a motor vehicle, then in the state in which the insured resides, provided ~~such~~ the certificate otherwise conforms to the provisions of this chapter, and the director shall accept the same upon condition that ~~said~~ the insurance carrier complies with the following provisions with respect to the policies so certified:
  - a. ~~Said~~ The insurance carrier shall execute a power of attorney authorizing the director to accept service on its behalf of notice or process in any action arising out of a motor vehicle accident in this state.
  - b. ~~Said~~ The insurance carrier shall agree in writing that ~~such~~ the policies ~~shall be deemed to~~ conform with the laws of this state relating to the terms of motor vehicle liability policies issued herein.
2. If any insurance carrier not authorized to transact business in this state, which has qualified to furnish proof of financial responsibility, defaults in any ~~said~~ undertaking or ~~agreements~~ agreement, the director may not thereafter accept as proof any certificate of ~~said~~ the carrier whether ~~thereof~~ thereof filed up to that time or thereafter tendered as proof, so long as ~~such~~ the default continues.

3. Notwithstanding the requirement of subsection 1, the nonresident owner of a motor vehicle not registered in this state may file proof of future financial responsibility of an insurance company or other state-authorized entity providing insurance and authorized or licensed to do business in the nonresident's state of residence as long as such proof of future financial responsibility is in the amounts required by this state.

Approved April 23, 2003  
Filed April 23, 2003

## CHAPTER 313

### SENATE BILL NO. 2207

(Senators Trenbeath, Fischer)

(Representative Nelson)

## DRIVER'S LICENSE EXAMINATIONS

AN ACT to amend and reenact section 39-06-14 of the North Dakota Century Code, relating to license examinations.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>138</sup> **SECTION 1. AMENDMENT.** Section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-14. Licenses issued to operators - General - Classified driver's license.**

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number unless specifically requested by an applicant. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

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<sup>138</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1443, chapter 314.

2. ~~a.~~ ~~All applicants~~ An applicant holding a valid North Dakota operator's license making application for renewal must be issued a class D license without being subjected to an examination ~~as herein provided.~~
3. ~~b.~~ ~~All applicants~~ An applicant, except ~~those~~ an applicant holding a valid North Dakota operator's license who will be issued a class D license, applying for issuance of ~~an operator license~~ license must be issued a classified license after having been required to submit to an examination in the type of motor vehicle or combination of vehicles for which license is desired and which license shall authorize the holder to drive the vehicles as provided in section 39-06.2-09, or as follows:
- (1) ~~a.~~ Class A driver with a class D- Any license may operate any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms]. A driver with a class D license may operate a farm tractor towing another vehicle having a gross weight in excess of ten thousand pounds [4535.92 kilograms], and a truck towing a trailer, semitrailer, or farm trailer when the gross weight of the trailer, semitrailer, or farm trailer, not including the weight of the towing vehicle, does not exceed sixteen thousand pounds [7257.48 kilograms].
- (2) A driver with a class D license may operate a house car or a vehicle towing a travel trailer being used solely for personal purposes ~~may be driven with a class D license.~~
- (3) ~~b.~~ Farm exemption. The holder of A driver with a class D license may operate any two-axle or tandem-axle motor vehicle, a farm tractor towing another vehicle having a gross weight in excess of six thousand pounds [2721.55 kilograms], and a truck or truck tractor towing a trailer, semitrailer, or farm trailer if the driver is exempted from a commercial driver's license under subsection 3 of section 39-06.2-06, except:
- (a) ~~A the driver may not operate a~~ double trailer, triple trailer, or, if under eighteen years of age, a truck tractor as defined in section 39-01-01.
- (b) ~~A or a~~ bus designed to carry sixteen or more passengers, including the driver.
- (4) ~~c.~~ Class A driver with a class M- Any licensee may operate motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding motorized bicycles, tractors, and vehicles on which the operator or passengers, or both, ride within an enclosed cab. A class M vehicle may not be operated under a class A, B, C, or D license.
- ~~e.~~ (1) The holder of a class A, B, C, or D license may receive a class M endorsement upon successful completion of an examination. The director may waive the skill portion of the

examination if the applicant has successfully completed a motorcycle safety course approved by the director.

d. ~~The holder of a class A, B, or C license may drive any vehicle in that classification, or lesser classification, except a class M vehicle.~~

e. (2) An applicant sixteen years of age and older, who does not hold a current valid operator's license may be issued a class M learner's permit after successful completion of a written examination. The class M license will be issued after the applicant has successfully completed a driver's examination. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director.

f. (3) Applicants fourteen or fifteen years of age may be issued a motorcycle learner's permit if the applicant is enrolled in or has completed an approved motorcycle safety course. Applicants for a motorcycle operator's license who are under sixteen years of age shall hold an initial learner's permit for at least two months before applying for a class M operator's license, shall have completed an approved motorcycle safety course, and shall hold a valid motorcycle learner's permit at the time of application. The director may waive the skill portion of the examination if the applicant has successfully completed a motorcycle safety course approved by the director. Any person under sixteen years of age who holds a permit or license is restricted to the operation of a motorcycle powered with an engine of two hundred fifty cubic centimeters, or less, displacement. Evidence that the applicant has satisfactorily completed a motorcycle safety course which meets the minimum requirements of the motorcycle safety foundation must accompany the application.

4. The holder of a class A, B, or C license may drive any vehicle in that or a lesser classification, except a class M vehicle.

~~3.~~ 5. Any holder of a classified license who drives a motor vehicle otherwise than as permitted by the class of license issued to the holder is deemed to be driving a motor vehicle without being duly licensed under this chapter. The holder of a classified license who desires to obtain a different class license in one of the classes provided by this chapter must exchange or renew the license. The director may adopt rules the director determines are necessary with respect to such renewals or exchanges for the proper administration of this chapter. No class A, B, or C license may be issued to any person under eighteen years of age, except a class A, B, or C type license specially restricted to use for custom harvest purposes must be issued to a person at least sixteen years of age who satisfactorily completes the appropriate examinations.

~~4.~~ 6. If Before operating any motor vehicle or motorcycle, any holder of a license issued pursuant to this chapter suffers who has suffered permanent loss of use of a hand, arm, foot, leg, or eye, the person shall, before operating any motor vehicle or motorcycle, make a report thereof the loss of use to the director who shall take such reasonable action as

may be proper under the provisions of this chapter as to reexamination the licensee to determine if the licensee is capable of operating vehicles for which the ~~individual~~ licensee is licensed.

5. 7. The director may issue a motorized bicycle operator's permit to an applicant who is at least fourteen years of age. To obtain a permit, the applicant shall pay a fee of ten dollars and take a written examination of the applicant's knowledge of traffic laws and general rules of the road. If the applicant passes the written examination and the director is satisfied that the applicant has adequate eyesight, the director may issue the applicant a motorized bicycle operator's permit, even if the applicant does not have an operator's license. The permit expires in the same manner as an operator's license. A person who has an operator's license, a temporary permit, an instruction permit, or a motorcycle permit is not required to obtain a motorized bicycle operator's permit.

Approved March 26, 2003

Filed March 26, 2003

## CHAPTER 314

### HOUSE BILL NO. 1443

(Representatives Thorpe, Iverson, Kasper, S. Kelsh)  
(Senators Fischer, Seymour)

## SOCIAL SECURITY NUMBER USE ON DRIVER'S LICENSES

AN ACT to amend and reenact subsection 1 of section 39-06-14 of the North Dakota Century Code, relating to a social security number on a driver's license; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>139</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number ~~unless specifically requested by an applicant~~. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

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<sup>139</sup> Section 39-06-14 was also amended by section 1 of Senate Bill No. 2207, chapter 313.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 26, 2003

Filed March 26, 2003

## CHAPTER 315

### HOUSE BILL NO. 1277

(Representatives Koppelman, Boehning, DeKrey, Kingsbury, Wieland)  
(Senator J. Lee)

## SURRENDER OF OPERATOR'S LICENSES

AN ACT to amend and reenact section 39-06-16 of the North Dakota Century Code, relating to the display of a motor vehicle operator's license.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-06-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-16. License to be carried and exhibited on demand.** ~~Every~~ A licensee shall have the licensee's operator's license or permit in the licensee's immediate possession at all times when operating a motor vehicle and shall ~~display~~ physically surrender the same license or permit, upon demand of any district court, municipal court, a patrolman, peace officer, or a field deputy or inspector of the department. However, ~~no~~ a person charged with violating this section may not be convicted or assessed any court costs if the person produces in court, to the chief of police, or in the office of the arresting officer an operator's license or permit ~~theretofore~~ issued to that person and valid and not under suspension, revocation, or cancellation at the time of the person's arrest.

Approved March 31, 2003  
Filed March 31, 2003

## CHAPTER 316

### HOUSE BILL NO. 1161

(Transportation Committee)

(At the request of the Department of Transportation)

## ALCOHOL LEVEL FOR MOTOR VEHICLE OFFENSES

AN ACT to amend and reenact section 39-06-32, subsection 1 of section 39-08-01, sections 39-20-03.1 and 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2 and 5 of section 39-20-05, and sections 39-20-07 and 39-20-09 of the North Dakota Century Code, relating to the level of alcohol concentration prohibited for motor vehicle operators.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>140</sup> **SECTION 1. AMENDMENT.** Section 39-06-32 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-32. Authority to suspend licenses.** The director may suspend the license of an operator, after hearing, upon proof by a fair preponderance of the evidence, that any of the following apply to the licensee:

1. Commission of an offense for which mandatory revocation of license is required upon conviction.
2. Incompetence to drive a motor vehicle.
3. Unlawful or fraudulent use of an operator's license.
4. Refusal to submit to an implied consent chemical test on an Indian reservation or in another state. For purposes of this subsection, the specific requirements for establishing a refusal used on the Indian reservation or in the other state may not be considered, and photostatic copies of the records of the other jurisdiction's drivers licensing authority are sufficient evidence of the refusal whether or not those copies are certified. The suspension must be for the same length of time as the revocation in section 39-20-04. If the refusal arose out of an arrest or stop of a person while operating a commercial motor vehicle, the period of suspension must be the same as the period of revocation provided in section 39-06.2-10.
5. Failure, as shown by the certificate of the court, to pay a fine or serve any other sentence as ordered by a court upon conviction for any criminal traffic offense.
6. Failure, as shown by the certificate of the court, to appear in court or post and forfeit bond after signing a promise to appear, if signing is

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<sup>140</sup> Section 39-06-32 was also amended by section 2 of Senate Bill No. 2149, chapter 312.

required by law, in violation of section 39-06.1-04, willful violation of a written promise to appear in court, in violation of section 39-07-08, or violation of equivalent ordinances or laws in another jurisdiction. Upon resolution by the operator of the underlying cause for a suspension under this subsection, as shown by the certificate of the court, the director shall record the suspension separately on the driving record. This separate record is not available to the public.

7. An administrative decision on an Indian reservation or in another state that the licensee's privilege to drive on that Indian reservation or in that state is suspended or revoked because of a violation of that Indian reservation's or state's law forbidding motor vehicle operation with an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, or because of a violation of that Indian reservation's or state's law forbidding the driving or being in actual physical control of a commercial motor vehicle while having an alcohol concentration of at least four one-hundredths of one percent by weight. The specific requirements for establishing the violation on the Indian reservation or in the other state may not be considered and certified copies of the records of the Indian reservation's or other state's drivers licensing authority are sufficient evidence of the violation. The suspension must be for the same duration as the suspension in section 39-20-04.1, if the violation does not involve a commercial motor vehicle. If the violation involves a commercial motor vehicle, the period of suspension must be the same as the period of suspension provided in section 39-06.2-10.
8. Conviction of an offense under this title and it appears from the director's records that the offense contributed to causing an accident which resulted in death or serious personal injury or serious property damage. No suspension may be imposed if the person has been sanctioned for the same offense under section 39-06-31.

<sup>141</sup> **SECTION 2. AMENDMENT.** Subsection 1 of section 39-08-01 of the North Dakota Century Code, as effective after July 31, 2003, 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 ~~ten~~ 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.

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<sup>141</sup> Section 39-08-01 was also amended by section 1 of House Bill No. 1191, chapter 323.

- 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.

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 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.

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

**39-20-03.1. Action following test result for a resident operator.** If a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two 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, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit if the person then has valid operating privileges, extending driving privileges for the next twenty-five days, or until earlier terminated by the decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by saliva or urine sample or by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the saliva, urine, or blood from the state toxicologist and if the analysis shows that person had an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to

that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

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

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

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

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

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

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

<sup>142</sup> **SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
  - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent

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<sup>142</sup> Section 39-20-04.1 was also amended by section 3 of House Bill No. 1439, chapter 321.

ordinance or the person's operator's license has not previously been suspended or revoked under this chapter.

- b. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter.
- c. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

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

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than ~~ten~~ eight one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
5. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer does not find in favor of the person, the copy of the decision serves as the director's

official notification to the person of the revocation, suspension, or denial of driving privileges in this state. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person had an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under this chapter. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the director within ten days of the conclusion of the hearing. If the hearing officer has determined in favor of the person, the director shall return the person's operator's license by regular mail to the address on file with the director under section 39-06-20.

<sup>143</sup> **SECTION 7. AMENDMENT.** Section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-07. Interpretation of chemical tests.** Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, an alcohol concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor. This presumption has no application to the administration of chapter 39-06.2.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol concentration in a person is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor.
3. A person having an alcohol concentration of at least ~~ten~~ eight one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.
4. Alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven milliliters of urine.

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<sup>143</sup> Section 39-20-07 was also amended by section 11 of Senate Bill No. 2151, chapter 469.

5. The results of the chemical analysis must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, and if the test is shown to have been performed according to methods and with devices approved by the state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical analysis and determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who exhibit the certificate upon demand of the person requested to take the chemical test.
6. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of the approval with the director and the recorder in each county, unless the board of county commissioners designates a different official, and shall include in the record:
  - a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
  - c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

The material filed under this section may be supplemented when the state toxicologist determines it to be necessary, and any supplemental material has the same force and effect as the material that it supplements.

7. Copies of the records referred to in subsections 5 and 6, certified by the recorder, or designated official, must be admitted as prima facie evidence of the matters stated in the records.
8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.
9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the forensic sciences division of the state department of health, or any employee of

either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

10. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

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

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

Approved April 7, 2003  
Filed April 7, 2003

## CHAPTER 317

### HOUSE BILL NO. 1047

(Legislative Council)  
(Judiciary B Committee)

## SPEED LIMITS AND VIOLATIONS

AN ACT to amend and reenact sections 39-06.1-05 and 39-06.1-06, paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10, and sections 39-07-09, 39-08-21, 39-09-02, 39-21-16, and 39-21-46 of the North Dakota Century Code, relating to driving in excess of the speed limit.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>144</sup> **SECTION 1. AMENDMENT.** Section 39-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-05. Offenses excepted.** The procedures authorized under sections 39-06.1-02 and 39-06.1-03 may not be utilized by a person charged with one of the following offenses:

1. Driving or being in actual physical control of a vehicle in violation of section 39-08-01, or an equivalent ordinance.
2. Reckless driving or aggravated reckless driving in violation of section 39-08-03, or an equivalent ordinance.
3. A violation of chapter 12.1-16 resulting from the operation of a motor vehicle.
4. Leaving the scene of an accident in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances.
5. Driving while license or driving privilege is suspended or revoked in violation of section 39-06-42, or an equivalent ordinance.
6. Violating subdivision b or c of subsection 5 of section 39-24-09.
7. Operating a modified motor vehicle in violation of section 39-21-45.1.
8. Driving without liability insurance in violation of section 39-08-20.
9. Operating an unsafe vehicle in violation of ~~subdivision b~~ of subsection 4 2 of section 39-21-46.

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<sup>144</sup> Section 39-06.1-05 was also amended by section 1 of House Bill No. 1394, chapter 318.

<sup>145</sup> **SECTION 2. AMENDMENT.** Section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-06. Amount of statutory fees.** The fees required for a noncriminal disposition pursuant to either section 39-06.1-02 or 39-06.1-03 must be as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of any amount not to exceed twenty dollars.
2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
  - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
  - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
  - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.
3. Except as provided in subsections 7, ~~and 11, and 12~~ of this section, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - 5	\$ 5
6 - 10	\$ 5 plus \$1/each mph over 5 mph over limit
11 - 15	\$ 10 plus \$1/each mph over 10 mph over limit
16 - 20	\$ 15 plus \$2/each mph over 15 mph over limit
21 - 25	\$ 25 plus \$3/each mph over 20 mph over limit
26 - 35	\$ 40 plus \$3/each mph over 25 mph over limit
36 - 45	\$ 70 plus \$3/each mph over 35 mph over limit
46 +	\$100 plus \$5/each mph over 45 mph over limit

4. For a violation of section 39-09-01, or an ordinance defining careless driving, a fee of thirty dollars.
5. For a violation of section 39-09-01.1, or an ordinance defining care required in driving, a fee of not less than ten dollars nor more than thirty dollars.
6. For a violation of any traffic parking regulations, except a violation of subsection 10 of section 39-01-15, on any state charitable or penal institution property or on the state capitol grounds, a fee in the amount of five dollars.

<sup>145</sup> Section 39-06.1-06 was also amended by section 1 of House Bill No. 1112, chapter 319, and section 1 of House Bill No. 1322, chapter 320.

7. ~~Except as provided in subsection 44, on~~ On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
1 - <del>5</del> <u>10</u>	<del>\$ 40 plus \$1/each</del> <u>\$2/each</u> mph over limit
6 - 10	<del>\$ 45 plus \$2/each</del> <u>5</u> mph over limit
11 - <del>15</del> <u>+</u>	<del>\$ 25</del> <u>20</u> plus <del>\$3/each</del> <u>\$5/each</u> mph over 10 mph over limit
16 - 20	<del>\$ 40 plus \$3/each</del> <u>15</u> mph over limit
21 - 25	<del>\$ 55 plus \$3/each</del> <u>20</u> mph over limit
26 - 35	<del>\$ 70 plus \$3/each</del> <u>25</u> mph over limit
36 - 45	<del>\$120 plus \$5/each</del> <u>35</u> mph over limit
46+	<del>\$170 plus \$5/each</del> <u>45</u> mph over limit

8. For a violation of section 39-21-41.4, a fee not to exceed twenty dollars.
9. For a violation of section 39-21-44 or a rule adopted under that section, a fee of two hundred fifty dollars.

10. For a violation of subsection ~~2~~ 3 of section 39-21-46, a fee established as follows:

- a. Driving more than ten hours since the last eight hours off duty, driving after fifteen hours on duty since the last eight hours off duty, driving after sixty hours on duty in seven days or seventy hours in eight days, no record of duty status or log book in possession, failing to retain previous seven-day record of duty status or log book, or operating a vehicle with four to six out-of-service defects, one hundred dollars;
- b. False record of duty status or log book or operating a vehicle with seven to nine out-of-service defects, two hundred fifty dollars;
- c. Operating a vehicle after driver placed out of service, operating a vehicle with ten or more out-of-service defects, or operating a vehicle that has been placed out of service prior to its repair, five hundred dollars; and
- d. All other violations of motor carrier safety rules adopted under subsection ~~2~~ 3 of section 39-21-46, fifty dollars.

11. On a highway on which the speed limit is posted in excess of ~~seventy~~ sixty-five miles [442.65 ~~104.61~~ kilometers] an hour, for a violation of section 39-09-02, or equivalent ordinance, a fee established as follows:

Miles per hour over lawful speed limit	Fee
4 - 5	\$ 20
6 - 10	\$ 40
11 - 15	\$ 60
16 - 20	\$ 80

24 - 25	\$100
26 - 30	\$125
31 - 35	\$150
36 +	\$150 plus \$5/each mph over 35 mph over limit

of five dollars for each mile per hour over the limit.

12. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, of a highway construction zone speed limit under subsection 2 of section 39-09-02, or, notwithstanding subsection 2 of section 40-05-06 or section 40-05.1-06, of an ordinance in a city or home rule city for a violation of a speed limit dependent upon being on or near a school, fees for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section. The fees in this subsection do not apply to a highway construction zone unless individuals engaged in construction are present at the time of the violation and the posted speed limit sign states "Minimum Fee \$40".

<sup>146</sup> **SECTION 3. AMENDMENT.** Paragraph 33 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (33) On a highway on which the speed limit is posted in excess of ~~seventy~~ sixty-five miles [~~412.65~~ 104.61 kilometers] an hour, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

Miles per hour over lawful speed limit	Points
1 - 5	0
6 - 10	1
11 - 15	<u>2</u> <u>3</u>
16 - 20	5
21 - 25	7
26 - 30	10
31 - 35	12
36 +	15

**SECTION 4. AMENDMENT.** Section 39-07-09 of the North Dakota Century Code is amended and reenacted as follows:

<sup>146</sup> Section 39-06.1-10 was also amended by section 3 of House Bill No. 1394, chapter 318, and section 1 of House Bill No. 1439, chapter 321.

**39-07-09. Offenses under which person halted may not be entitled to release upon promise to appear.** Section 39-07-07 does not apply to a person if:

1. The halting officer has good reason to believe the person guilty of any felony or if the person is halted and charged with an offense listed in section 39-06.1-05 but not listed in subsection 2; or
2. The halting officer, acting within the officer's discretion, determines that it is inadvisable to release the person upon a promise to appear and if the person has been halted and charged with any of the following offenses:
  - a. Reckless driving.
  - b. Driving in excess of speed limitations established by the state or by local authorities in their respective jurisdictions.
  - c. Driving while license or driving privilege is suspended or revoked for violation of section 39-06-42, or an equivalent ordinance.
  - d. Operating a modified vehicle.
  - e. Driving without liability insurance in violation of section 39-08-20.
  - f. Failing to display a placard or flag, in violation of any rule implementing section 39-21-44, while transporting explosive or hazardous materials.
  - g. Operating an unsafe vehicle in violation of ~~subdivision b of~~ subsection 4 2 of section 39-21-46.

The halting officer forthwith shall take any person not released upon a promise to appear before the nearest or most accessible magistrate.

**SECTION 5. AMENDMENT.** Section 39-08-21 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-21. Medical qualifications exemption for intrastate drivers.** Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection ~~2~~ 3 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who is qualified through a state medical waiver program to operate a commercial motor vehicle within the boundaries of this state or a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state; and
3. Has a medical or physical condition that:

- a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, chapter III, subchapter B;
- b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
- c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

<sup>147</sup> **SECTION 6. AMENDMENT.** Section 39-09-02 of the North Dakota Century Code as amended in section 1 of House Bill No. 1046, as approved by the fifty-eighth legislative assembly, is amended and reenacted as follows:

**39-09-02. Speed limitations.**

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
  - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.
  - b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
  - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.
  - d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].

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<sup>147</sup> Section 39-09-02 was also amended by section 6 of House Bill No. 1012, chapter 12, and section 1 of House Bill No. 1046, chapter 325.

- e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
  - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane county and township highways if there is no speed limit posted, unless otherwise permitted, restricted, or required by conditions.
  - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways ~~and on paved and divided multilane highways~~ if posted for that speed, unless otherwise permitted, restricted, or required by conditions.
  - h. Seventy miles [112.65 kilometers] an hour on ~~access-controlled, paved and divided, multilane interstate~~ highways, unless otherwise permitted, restricted, or required by conditions.
  - i. Seventy-five miles [120.70 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
  3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
  4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

**SECTION 7. AMENDMENT.** Section 39-21-16 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-16. Lamps on other vehicles and equipment.** Every vehicle, including animal-drawn vehicles and vehicles referred to in subsection ~~3~~ 4 of section 39-21-46, not specifically required by the provisions of this chapter to be equipped with lamps or other lighting devices, must at all times specified in section 39-21-01 be equipped with at least one lamp displaying a white light visible from a distance of not less than one thousand feet [304.8 meters] to the front of the vehicle, and must also be equipped with two lamps displaying red light visible from a distance of not less than one thousand feet [304.8 meters] to the rear of the vehicle, or two red reflectors visible for distances of one hundred feet [30.48 meters] to six hundred feet [182.88 meters] to the rear when illuminated by the lower beams of headlamps.

**SECTION 8. AMENDMENT.** Section 39-21-46 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-46. Scope and effect of equipment requirements - Penalty.**

1. ~~a.~~ It is unlawful for any person to drive or move, or for the owner to cause or knowingly permit to be driven or moved, on any highway any vehicle or combination of vehicles which the actor knows does not contain those parts or is not at all times equipped with lamps and other equipment in proper condition and adjustment as required in this chapter, or which the actor knows is equipped in any manner in violation of this chapter, or for any person to do any act forbidden or fail to perform any act required under this chapter for which a fee or penalty for its violation is not otherwise provided.
  - ~~b.~~
- ~~2.~~ 2. A person who drives or moves, or any owner who causes or knowingly permits to be driven or moved upon a highway, any vehicle or combination of vehicles which that person knows is in such unsafe condition as to endanger a person is guilty of an infraction.
- ~~2.~~ 3. The superintendent of the state highway patrol shall, under chapter 28-32, adopt necessary rules concerning the safe operation of motor vehicles and when and how motor carrier audits or inspections will be conducted. The rules must duplicate or be consistent with current motor carrier safety regulations of the United States department of transportation. The superintendent of the state highway patrol may adopt the motor carrier safety regulations by reference, and any adoption must be construed to incorporate amendments as may be made from time to time. A violation of rules adopted under this subsection is a noncriminal violation. A person who fails or refuses to comply with these rules must be assessed a fee in the amount set forth in ~~subsection 40 of~~ section 39-06.1-06 for each violation.
- ~~3.~~ 4. Nothing contained in this chapter may be construed to prohibit the use of additional parts and accessories on any vehicle not inconsistent with the provisions of this chapter.
- ~~4.~~ 5. The provisions of this chapter with respect to equipment on vehicles do not apply to implements of husbandry, road machinery, road rollers, or farm tractors except as specifically made applicable.
- ~~5.~~ 6. The provisions of this chapter with respect to equipment required on vehicles do not apply to motorcycles or motor-driven cycles, except as specifically made applicable.
- ~~6.~~ 7. The provisions of this chapter and regulations of the department do not apply to vehicles moved solely by human power, except as specifically made applicable.

Approved May 2, 2003

Filed May 2, 2003

## CHAPTER 318

### HOUSE BILL NO. 1394

(Representatives Aarsvold, Carlisle, Porter, Severson)  
(Senators Heitkamp, Lyson)

### VEHICLE ACCIDENT WITH EMERGENCY VEHICLE

AN ACT to create and enact a new subsection to section 39-06.1-05 and a new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code, relating to offenses exempted from administrative proceedings and demerit points; to amend and reenact sections 39-06.1-09 and 39-10-26 of the North Dakota Century Code, relating to yielding to an emergency vehicle; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>148</sup> **SECTION 1.** A new subsection to section 39-06.1-05 of the North Dakota Century Code is created and enacted as follows:

Causing an accident with an authorized emergency vehicle in violation of subsection 4 of section 39-10-26.

<sup>149</sup> **SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-09. Moving violation defined.** For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 4 of section 39-10-26, sections 39-21-44 and 39-21-45.1, and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

<sup>150</sup> **SECTION 3.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

<u>Causing an accident with an authorized emergency vehicle in violation of</u>	<u>2 points</u>
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<sup>148</sup> Section 39-06.1-05 was also amended by section 1 of House Bill No. 1047, chapter 317.

<sup>149</sup> Section 39-06.1-09 was also amended by section 2 of House Bill No. 1112, chapter 319.

<sup>150</sup> Section 39-06.1-10 was also amended by section 3 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1439, chapter 321.

subsection 4 of section  
39-10-26, or equivalent  
ordinance

**SECTION 4. AMENDMENT.** Section 39-10-26 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-26. Operation of vehicle on approach of authorized emergency vehicle - Penalty.**

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on a multilane highway outside the limits of a city unless the highway is part of the interstate system, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. This section does not operate to relieve the driver of an authorized emergency vehicle from the duty to drive with due regard for the safety of all persons using the highway.
4. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.

Approved April 11, 2003

Filed April 11, 2003

## CHAPTER 319

### HOUSE BILL NO. 1112

(Transportation Committee)

(At the request of the Department of Transportation)

### TRAFFIC FEES, VIOLATIONS, AND EXCESS SIZE

AN ACT to amend and reenact subsection 2 of section 39-06.1-06, sections 39-06.1-09 and 39-12-02, subsection 1 of section 39-12-05.3, and sections 39-12-08, 39-12-09, and 39-12-17 of the North Dakota Century Code, relating to noncriminal disposition fees, definition of moving violation, vehicles of excessive size and weight, and limitations on loads extending beyond the sides of a motor vehicle; and to provide a penalty.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>151</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

2. For a moving violation as defined in section 39-06.1-09, a fee of twenty dollars, except for:
  - a. A violation of section 39-10-26, 39-10-26.2, 39-10-41, 39-10-42, 39-10-46, or 39-10-46.1, a fee of fifty dollars.
  - b. A violation of section 39-10-05 involving failure to yield to a pedestrian or subsection 1 of section 39-10-28, a fee of fifty dollars.
  - c. A violation of section 39-21-41.2, no fee may be imposed by the state, a city, or a county including a city or county operating under a home rule charter.
  - d. A violation of subsection 2 of section 39-12-02, a fee of one hundred dollars.

<sup>152</sup> **SECTION 2. AMENDMENT.** Section 39-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-09. Moving violation defined.** For the purposes of sections 39-06.1-06 and 39-06.1-13, a "moving violation" means a violation of section 39-04-22; subsection 1 of section 39-04-37; section 39-04-55; 39-06-01; 39-06-14; 39-06-16; 39-09-04.1; 39-09-09; subsection 2 of section 39-12-02; sections 39-12-04; 39-12-05; 39-12-06; 39-12-09; 39-24-02; or 39-24-09, except subdivisions b and c of subsection 5, or equivalent ordinances; or a violation of the provisions of

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<sup>151</sup> Section 39-06.1-06 was also amended by section 2 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1322, chapter 320.

<sup>152</sup> Section 39-06.1-09 was also amended by section 2 of House Bill No. 1394, chapter 318.

chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except sections 39-21-44 and 39-21-45.1 and subdivision b of subsection 1 and subsection 2 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

**SECTION 3. AMENDMENT.** Section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-02. Special permits for vehicles of excessive size and weight issued - Contents - Fees.**

1. The highway patrol and local authorities in their respective jurisdictions, upon application and payment of the appropriate charges and for good cause shown, may issue a special written permit authorizing the applicant to operate or move a vehicle, mobile home, or modular unit of a size or weight exceeding the maximum specified by this chapter, upon a highway under the jurisdiction of the body granting the permit. Every permit may designate the route to be traversed and may contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit must be carried in the vehicle to which it refers and must be opened to inspection by any peace officer or agent of the superintendent of the highway patrol unless prior approval is obtained from the highway patrol. It is a violation of this chapter for any person to violate any of the terms or conditions of the permit. All permits for the movement of excessive size and weight on state highways must be for single trips only. The highway patrol and local authorities may adopt rules governing the movement of oversize and overweight vehicles.
2. A person operating a motor vehicle, or the owner of the motor vehicle being operated, without a permit as specified in subsection 1 must be assessed a fee of one hundred dollars.
- ~~2.~~ 3. Upon any application for a permit to move a new manufactured building or modular unit from outside this state to be located anywhere within this state, the manufacturer is deemed to have certified that the new manufactured building or modular unit meets all applicable building codes and all applicable electrical wiring and equipment, plumbing, and fire standards. The state is not liable to any person for issuing a permit in violation of this subsection.
- ~~3.~~ 4. An appropriate charge must be made for each permit and all funds collected hereunder by the highway patrol must be deposited in the state highway fund for use in the construction and maintenance of highways and operating expenses of the department of transportation. Official or Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles may not be required to pay are not subject to charges for permits. The minimum fee for selected charges is as follows:
  - a. The fee for the ten percent weight exemption, harvest and wintertime, is fifty dollars per month for fees paid on a monthly basis or two hundred fifty dollars per year for fees paid on a yearly basis. Unused fees paid on a monthly basis are refundable. Unused fees paid on a yearly basis are not refundable.

- b. The fee for a non-self-issuing interstate permit is ten dollars per trip.
  - c. The fee for special mobile equipment is twenty-five dollars per trip.
  - d. The fee for engineering is twenty-five dollars per trip.
  - e. The fee for faxing a permit is five dollars.
  - f. The fee for a single trip permit is twenty dollars per trip.
4. 5. The director of tax equalization of the county of destination must be furnished a copy of the permit for the movement of an overdimensional mobile home.

<sup>153</sup> **SECTION 4. AMENDMENT.** Subsection 1 of section 39-12-05.3 of the North Dakota Century Code, effective after July 31, 2003, is amended and reenacted as follows:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed ~~seventeen~~ nineteen thousand pounds [~~7744.07~~ 8618.26 kilograms] per axle, with a maximum of thirty-four thousand pounds [15422.14 kilograms] gross weight on a tandem axle and a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.

**SECTION 5. AMENDMENT.** Section 39-12-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-08. Penalty for violation of chapter.** Any person violating any of the provisions of sections 39-12-04, 39-12-05, or 39-12-06, ~~or 39-12-09~~ must be assessed a fee of twenty dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of ten dollars.

**SECTION 6. AMENDMENT.** Section 39-12-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-09. Unlawful to violate provisions governing size, weight, or construction of vehicles - Size and weight specified in this chapter lawful through state - Penalty.** It is unlawful for any person to drive or move, or for the

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<sup>153</sup> Section 39-12-05.3 was also amended by section 1 of Senate Bill No. 2407, chapter 332.

owner to cause or knowingly to permit to be driven or moved, on any highway, ~~any vehicle or vehicles of a size or weight exceeding the limitations stated in this chapter,~~ or any vehicle or vehicles which are not constructed as required in this chapter nor according to the rules and regulations of the director adopted pursuant to the provisions of this chapter. The maximum size and weight of vehicles specified in this chapter are lawful throughout this state, except as they may be limited by virtue of specifications made pursuant to the other provisions of this chapter. Any person who violates any of the provisions of this section must be assessed a fee of twenty dollars.

**SECTION 7. AMENDMENT.** Section 39-12-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-12-17. Trial - Charges.** At the trial of the action, the court shall hear testimony concerning the facts and if it is found that such vehicle or vehicles were moved upon the highways, streets, or roads of this state at a weight in excess of the limitations imposed under the provisions of section 39-12-03 or as limited by the provisions of section 39-12-05, charges for the extraordinary use of the highways, streets, or roads must be assessed as follows:

1. The storage charges and costs of the action must be assessed; and
2. An additional charge must be assessed as follows:
  - a. ~~One cent per pound [453.59 grams] for each pound [453.59 grams] of weight in excess of the legal limit, up to three thousand pounds [1360.77 kilograms] of excess weight;~~
  - b. ~~Four cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over three thousand pounds [1360.77 kilograms] but is less than five thousand pounds [2267.96 kilograms] of excess;~~
  - c. ~~Eight cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over five thousand pounds [2267.96 kilograms] but is not more than ten thousand pounds [4535.92 kilograms];~~
  - d. ~~Ten cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by over ten thousand pounds [4535.92 kilograms] but is less than twenty thousand pounds [9071.84 kilograms] of excess weight; and~~
  - e. ~~Twenty cents per pound [453.59 grams] for each pound [453.59 grams] which exceeds the legal limit by more than twenty thousand pounds [9071.84 kilograms].~~

1 to 1,000 pounds [453.59 kilograms] of excess weight = \$20

1,001 to 2,000 pounds [454.05 to 907.18 kilograms] of excess weight = \$40

2,001 to 3,000 pounds [907.64 to 1360.78 kilograms] of excess weight = \$60

3,001 to 4,000 pounds [1361.23 to 1814.37 kilograms] of excess weight = \$140

4,001 to 5,000 pounds [1814.82 to 2267.96 kilograms] of excess weight = \$220

5,001 to 6,000 pounds [2268.41 to 2721.55 kilograms] of excess weight = \$305

6,001 to 7,000 pounds [2722.01 to 3175.14 kilograms] of excess weight = \$380

7,001 to 8,000 pounds [3175.60 to 3628.74 kilograms] of excess weight = \$495

8,001 to 9,000 pounds [3629.19 to 4082.33 kilograms] of excess weight = \$575

9,001 to 10,000 pounds [4082.78 to 4535.92 kilograms] of excess weight = \$655

10,001 to 11,000 pounds [4536.37 to 4989.51 kilograms] of excess weight = \$1,100

11,001 to 12,000 pounds [4989.97 to 5443.10 kilograms] of excess weight = \$1,200

12,001 to 13,000 pounds [5443.56 to 5896.70 kilograms] of excess weight = \$1,300

13,001 to 14,000 pounds [5897.15 to 6350.29 kilograms] of excess weight = \$1,680

14,001 to 15,000 pounds [6350.74 to 6803.88 kilograms] of excess weight = \$1,800

15,001 to 16,000 pounds [6804.33 to 7257.47 kilograms] of excess weight = \$1,920

16,001 to 17,000 pounds [7257.93 to 7711.06 kilograms] of excess weight = \$2,550

17,001 to 18,000 pounds [7711.52 to 8164.66 kilograms] of excess weight = \$2,700

18,001 to 19,000 pounds [8165.11 to 8618.25 kilograms] of excess weight = \$2,850

19,001 to 20,000 pounds [8618.70 to 9071.84 kilograms] of excess weight = \$3,000

20,001 to 21,000 pounds [9072.29 to 9525.43 kilograms] of excess weight = \$4,200

21,001 to 22,000 pounds [9525.89 to 9979.02 kilograms] of excess weight = \$4,400

22,001 to 23,000 pounds [9979.48 to 10432.62 kilograms] of excess weight = \$4,600

23,001 to 24,000 pounds [10433.07 to 10886.21 kilograms] of excess weight = \$4,800

24,001 to 25,000 pounds [10886.66 to 11339.80 kilograms] of excess weight = \$5,000

25,001 to 26,000 pounds [11340.25 to 11793.40 kilograms] of excess weight = \$5,200

26,001 to 27,000 pounds [11793.86 to 12246.99 kilograms] of excess weight = \$5,400

27,001 to 28,000 pounds [12247.45 to 12700.59 kilograms] of excess weight = \$5,600

28,001 to 29,000 pounds [12701.04 to 13154.18 kilograms] of excess weight = \$5,800

29,001 to 30,000 pounds [13154.63 to 13607.77 kilograms] of excess weight = \$6,000

An additional charge of \$200 for every 1,000-pound [453.59-kilogram] increase over 30,000 pounds [13607.77 kilograms] consistent with the above formula.

Approved April 16, 2003

Filed April 17, 2003

## CHAPTER 320

### HOUSE BILL NO. 1322

(Representatives Weiler, F. Klein, Wald)  
(Senators Cook, Dever, Freborg)

## CONSTRUCTION ZONE SPEED LIMIT VIOLATIONS

AN ACT to amend and reenact subsection 12 of section 39-06.1-06 of the North Dakota Century Code, relating to the fees for a violation of a highway construction zone speed limit.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>154</sup> **SECTION 1. AMENDMENT.** Subsection 12 of section 39-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

12. For a violation of a school zone speed limit under subdivision b of subsection 1 of section 39-09-02, ~~of a highway construction zone speed limit under subsection 2 of section 39-09-02,~~ or, notwithstanding subsection 2 of section 40-05-06 or section 40-05.1-06, of an ordinance in a city or home rule city for a violation of a speed limit dependent upon being on or near a school, fees for a noncriminal disposition are forty dollars for one through ten miles per hour over the posted speed; and forty dollars, plus one dollar for each additional mile per hour over ten miles per hour over the limit unless a greater fee would be applicable under this section.
  
13. For a violation of a highway construction zone speed limit under subsection 2 of section 39-09-02, a fee of eighty dollars for one through ten miles per hour over the posted speed; and eighty dollars plus two dollars for each mile per hour over ten miles per hour over the limit, unless a greater fee would be applicable under this section. The ~~fee~~ fee in this subsection ~~de~~ does not apply to a highway construction zone unless individuals engaged in construction are present at the time and place of the violation and the posted speed limit sign states "Minimum Fee \$40 \$80".

Approved March 31, 2003

Filed March 31, 2003

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<sup>154</sup> Section 39-06.1-06 was also amended by section 2 of House Bill No. 1047, chapter 317, and section 1 of House Bill No. 1112, chapter 319.

## CHAPTER 321

### HOUSE BILL NO. 1439

(Representative Weiler)  
(Senator Nething)

## DRIVING UNDER THE INFLUENCE CONSEQUENCES

AN ACT to amend and reenact subsection 7 of section 39-06.1-10, section 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to consequences for driving while under the influence; and to provide for a legislative council study.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>155</sup> **SECTION 1. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
  - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
  - ~~e.~~ d. Two years if the operator's record shows the person has at least ~~twice~~ once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at

<sup>155</sup> Section 39-06.1-10 was also amended by section 3 of House Bill No. 1394, chapter 318, and section 3 of House Bill No. 1047, chapter 317.

least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.

- e. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation is for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

**SECTION 2. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to testing.**

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof~~ of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
- a. ~~No~~ An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
    - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
    - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~

- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
  - f. The person has never been convicted under section 39-08-01.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing.

<sup>156</sup> **SECTION 3. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
  - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under eighteen one-hundredths of one percent by weight.
  - b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.
  - c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once

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<sup>156</sup> Section 39-20-04.1 was also amended by section 5 of House Bill No. 1161, chapter 316.

previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under eighteen one-hundredths of one percent by weight.

- ~~e.~~ d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has ~~at least twice previously~~ once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, ~~or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests~~ for an alcohol concentration at least eighteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under eighteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least eighteen one-hundredths of one percent by weight.

**SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE.** The legislative council shall consider studying, during the 2003-04 interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly.

Approved April 23, 2003  
Filed April 23, 2003

## CHAPTER 322

### SENATE BILL NO. 2150

(Transportation Committee)

(At the request of the Department of Transportation)

## COMMERCIAL DRIVER RECORDS AND DISQUALIFICATION

AN ACT to create and enact two new sections to chapter 39-06.2 of the North Dakota Century Code, relating to furnishing driving record information and to records of imminent hazard disqualification of commercial drivers; and to amend and reenact subsection 67 of section 39-01-01 and sections 39-06.2-02 and 39-06.2-10 of the North Dakota Century Code, relating to definitions and disqualification of commercial motor vehicle operators.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

**Driving record information to be furnished.** Notwithstanding any other provision of law, the director shall furnish, upon request and payment of a fee of three dollars, full information regarding the driving record of a person who has been issued a commercial driver's license to an employer or to a prospective employer if the person has given written consent to the prospective employer for this information.

**SECTION 2.** A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

**Imminent hazard disqualification - Records.** A disqualification imposed in accordance with the provisions of 49 CFR part 383.52 relating to notification from the federal motor carrier safety administration that the driver is disqualified from driving a commercial motor vehicle and is determined to constitute an imminent hazard becomes a part of the driver's record maintained by the director.

<sup>157</sup> **SECTION 3. AMENDMENT.** Subsection 67 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

67. "Schoolbus" means any a commercial motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to

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<sup>157</sup> Section 39-01-01 was also amended by section 1 of Senate Bill No. 2213, chapter 307, and section 2 of Senate Bill No. 2213, chapter 307.

transport primary or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport primary or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.

<sup>158</sup> **SECTION 4. AMENDMENT.** Section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-02. Definitions.** As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
  - a. The number of grams of alcohol per one hundred milliliters of blood;
  - b. The number of grams of alcohol per two hundred ten liters of breath; or
  - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
  - a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
  - b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;

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<sup>158</sup> Section 39-06.2-02 was also amended by section 4 of Senate Bill No. 2149, chapter 312.

- c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
  - d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
  8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
  9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
  10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
  11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
  12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
  13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.
  14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
  15. "Fatality" means the death of a person as a result of a motor vehicle accident.
  - ~~16.~~ 16. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
  - ~~17.~~ 17. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
  - ~~18.~~ 18. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units.

- ~~48.~~ 19. "Hazardous materials" has the meaning as that found in section 103 of the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.].
20. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- ~~49.~~ 21. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.
22. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
- ~~20.~~ 23. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
- ~~24.~~ 24. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
  - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely; ~~or~~
  - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
  - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
  - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or
  - f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported.
- ~~22.~~ 25. "State" means a state of the United States or the District of Columbia.

~~23.~~ 26. "United States" means the fifty states and the District of Columbia.

**SECTION 5. AMENDMENT.** Section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-10. Disqualification and cancellation - ~~Penalty.~~**

1. Disqualification offenses. Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:
  - a. Driving a commercial motor vehicle under the influence of alcohol or drugs;
  - b. Leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-09;
  - c. Using a commercial motor vehicle in the commission of any felony as defined in this chapter;
  - d. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle; or
  - e. Driving or being in actual physical control of a commercial motor vehicle while the alcohol concentration of the person's blood, breath, or urine is four one-hundredths of one percent or more by weight.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after July 1, 1989, may be considered in applying this subsection.
3. The director may adopt rules under section 39-06.2-14, establishing guidelines, including conditions, under which a disqualification for life under ~~subsection~~ subsections 2, 8, 10, and 12 may be reduced to a period of not less than ten years.
4. A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
5. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.

6. Disqualification for railroad-highway grade crossing violation:
  - a. A driver who is convicted of driving a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to any one of the following six offenses at a railroad-highway grade crossing is disqualified for the period of time specified in subdivision b:
    - (1) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
    - (2) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
    - (3) For drivers who are always required to stop, failing to stop before driving onto the crossing;
    - (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
    - (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; and
    - (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.
  - b. Duration of disqualification for a railroad-highway grade crossing violation:
    - (1) First violation. A driver is disqualified for not less than sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.
    - (2) Second violation. A driver is disqualified for not less than one hundred twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.
    - (3) Third or subsequent violation. A driver is disqualified for not less than one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.
7. For a first conviction of driving while under the influence of alcohol or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
8. For a second conviction of driving while under the influence or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.

9. For a first conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
10. For a second conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
11. For a first conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
12. For a second conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
13. For a conviction for using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance while operating a commercial motor vehicle or a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
14. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of any combination of two serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and either conviction results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
15. A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if convicted of any combination of three or more serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and any of the convictions results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
16. Notice and hearing. Prior to suspending, revoking, or disqualifying a driver under this section, the director must provide the driver with notice of opportunity for hearing, in accordance with section 39-06-33, and the hearing requested must be held in accordance with section 39-06-33.
- 8- 17. After suspending, revoking, or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

## CHAPTER 323

### HOUSE BILL NO. 1191

(Representatives Carlisle, R. Kelsch, Maragos)  
(Senators Lyson, Robinson, Stenehjem)

### DRUG COURT PROGRAM

AN ACT to amend and reenact section 39-08-01 of the North Dakota Century Code, relating to the drug court program.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>159</sup> **SECTION 1. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-01. (~~Effective through July 31, 2003~~) Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

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 ten 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.

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 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.

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<sup>159</sup> Section 39-08-01 was also amended by section 2 of House Bill No. 1161, chapter 316.

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
  - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may

suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.

- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
  - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

**(Effective after July 31, 2003) Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

4. 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 ten 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.

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 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.

- 2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.
- 3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
- 4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
  - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section ~~12-1-32-02~~.
  - f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
  - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.
5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

Approved March 27, 2003  
Filed March 27, 2003

## CHAPTER 324

### HOUSE BILL NO. 1238

(Representatives Mueller, Metcalf, Severson)  
(Senators Erbele, Taylor)

## DRIVING WITHOUT LIABILITY INSURANCE

AN ACT to amend and reenact subsection 1 of section 39-08-20 of the North Dakota Century Code, relating to driving without liability insurance.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>160</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-08-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law or during the investigation of an accident, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this section if that person fails to submit satisfactory evidence of the policy to the officer or the officer's agency within twenty days of the date of the request. If that person produces satisfactory evidence of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the officer, the officer's agency, or a court, that person may not be convicted or assessed any court costs for violation of this section. Notwithstanding section 26.1-30-18, a person may be convicted for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle. Violation of this section is a class B misdemeanor and the sentence imposed must include a fine of at least one hundred fifty dollars which may not be suspended. A person convicted for a second or subsequent violation of driving without liability

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<sup>160</sup> Section 39-08-20 was also amended by section 7 of House Bill No. 1088, chapter 266.

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insurance within an eighteen-month period must be fined at least three hundred dollars which may not be suspended.

Approved March 31, 2003

Filed March 31, 2003

## CHAPTER 325

### HOUSE BILL NO. 1046

(Legislative Council)  
(Judiciary B Committee)

### SPEED LIMITS

AN ACT to amend and reenact section 39-09-02 of the North Dakota Century Code, relating to speed limitations; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>161</sup> **SECTION 1. AMENDMENT.** Section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-09-02. Speed limitations.**

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
  - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.
  - b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
  - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.

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<sup>161</sup> Section 39-09-02 was also amended by section 6 of House Bill No. 1012, chapter 12, and section 6 of House Bill No. 1047, chapter 317.

- d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].
  - e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
  - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, ~~and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise,~~ unless otherwise permitted, restricted, or required by conditions.
  - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways ~~if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed,~~ and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
  - h. Seventy miles [112.65 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
  3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
  4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 20, 2003  
Filed March 20, 2003

## CHAPTER 326

### HOUSE BILL NO. 1316

(Representatives Severson, Devlin, Froseth, Porter, Uglem)  
(Senator Krebsbach)

## EMERGENCY VEHICLE AIRHORNS

AN ACT to amend and reenact section 39-10-03 of the North Dakota Century Code, relating to emergency vehicles.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-10-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-03. Class A authorized emergency vehicles.**

1. The driver of a class A authorized emergency vehicle may:
  - a. Park or stand, irrespective of the provisions of this chapter.
  - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be necessary for safe operation.
  - c. Exceed the speed limit so long as the driver does not endanger life or property.
  - d. Disregard regulations governing direction of movement or turning in specified directions.
2. The exceptions herein granted to a class A authorized emergency vehicle apply only:
  - a. When the authorized emergency vehicle is in pursuit of or apprehension of a violator or a suspected violator requiring the use of these exemptions.
  - b. When the class A authorized emergency vehicle is being operated in response to a reported emergency involving a possible personal injury, death, or damage to property, and when giving ~~audible signal by siren or when giving~~ adequate warning by use of a flashing red or combination red and white lights ~~which that~~ are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters] and if appropriate, giving audible signal by siren or airhorn.
  - c. In any instance when the head of a law enforcement agency deems advisable within the area of that person's jurisdiction for the protection of person and property and when giving audible signal by siren or when giving adequate warning by use of a flashing red or combination red and white lights which are visible under normal atmospheric conditions for at least five hundred feet [152.4 meters].

3. No emergency vehicle may display or permit to be displayed any red lamp except when operated on official business.
4. Repealed by S.L. 1979, ch. 424, § 2.
5. Any law enforcement officer as provided in paragraph 2 of subdivision a of subsection 2 of section 39-01-01 having stopped another vehicle along a highway, and while still involved in that incident, or any other such activity, may use amber lights, visible under normal atmospheric conditions for at least five hundred feet [152.4 meters], for the purpose of maintaining traffic flow.

Approved March 27, 2003

Filed March 28, 2003

**CHAPTER 327****SENATE BILL NO. 2342**

(Senators Krebsbach, Espegard, Robinson)  
(Representatives DeKrey, R. Kelsch)

**ELECTRONIC LIGHTING DEVICE DISPLAY**

AN ACT to create and enact a new subsection to section 39-10-07.2 of the North Dakota Century Code, relating to the display of an electronic lighting device.

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

**SECTION 1.** A new subsection to section 39-10-07.2 of the North Dakota Century Code is created and enacted as follows:

This section does not prohibit the use of portable battery powered warning devices emitting a flashing red light placed upon a highway to alert oncoming traffic to a disabled or stopped motor vehicle.

Approved March 26, 2003

Filed March 26, 2003

## CHAPTER 328

### SENATE BILL NO. 2301

(Senator Andrist)

## RAILROAD CROSSING OUT-OF-SERVICE SIGNS

AN ACT to amend and reenact section 39-10-43 of the North Dakota Century Code, relating to the type of sign that may be placed at an out-of-service railroad grade crossing.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-10-43 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-43. Certain vehicles must stop at all railroad grade crossings.**

1. The driver of a bus carrying passengers, or of any schoolbus, or of any vehicle carrying any chlorine, empty or loaded cargo tank vehicles used to transport dangerous articles or any liquid having a flashpoint below two hundred degrees Fahrenheit [93.33 degrees Celsius], cargo tank vehicles transporting a commodity having a temperature above its flashpoint at the time of loading, certain cargo tank vehicles transporting commodities under special permits issued by the hazardous materials regulations board, and every motor vehicle which must have the following placards: "explosives", "poison", "flammable oxidizers", "compressed gas", "corrosives", "flammable gas", "radioactive", or "dangerous", before crossing at grade any track or tracks of a railroad, shall stop such vehicle within fifty feet [15.24 meters] but not less than fifteen feet [4.57 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train and may not proceed until the driver can do so safely. After stopping as required herein and upon proceeding when it is safe to do so, the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for manually changing gears while traversing such crossing and the driver may not manually shift gears while crossing the track or tracks.
2. No stop need be made at any such crossing at which traffic is controlled by a police officer. For the purposes of this section, a United States marshal must be considered a police officer.
3. No stop need be made at a crossing that the director has designated as an out-of-service crossing and which is clearly marked by signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing.
4. The designation must be limited to use at crossings where track has been abandoned or its use discontinued.
5. The director shall notify the road authority and any railway company of a crossing under the jurisdiction of that railway company which the

director has designated as an out-of-service crossing under this section and the road authority shall erect signs bearing the words "Tracks out of service" or "Exempt" in conspicuous places on each side of the crossing. ~~The railway company shall remove the crossbucks.~~

6. All signs must conform to the manual on uniform traffic control devices as provided under section 39-13-06.

Approved March 12, 2003

Filed March 12, 2003

**CHAPTER 329****HOUSE BILL NO. 1319**

(Representatives Severson, Delmore, Porter)  
(Senators Erbele, Klein, Krebsbach)

**EMERGENCY VEHICLE FOLLOWING PROHIBITED**

AN ACT to amend and reenact section 39-10-57 of the North Dakota Century Code, relating to following or stopping by an emergency vehicle.

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

**SECTION 1. AMENDMENT.** Section 39-10-57 of the North Dakota Century Code is amended and reenacted as follows:

**39-10-57. Following fire apparatus emergency vehicle prohibited - Stopping by emergency vehicle.** The driver of ~~any a~~ a vehicle other than one on official business may not follow ~~any fire apparatus traveling in response to a fire alarm~~ closer than five hundred feet [152.4 meters] ~~or behind an emergency vehicle displaying the appropriate light for that vehicle in an emergency.~~ A driver of a vehicle other than one on official business may not stop ~~such the~~ vehicle within ~~five two~~ two hundred feet [~~152.4~~ 60.96 meters] of any ~~fire apparatus~~ emergency vehicle stopped in answer to a ~~fire alarm~~ 911 emergency.

Approved March 19, 2003  
Filed March 19, 2003

## CHAPTER 330

### HOUSE BILL NO. 1220

(Representatives Grande, Hawken, Meier, Potter)  
(Senators Christenson, J. Lee)

### FLEEING LAW OFFICER PENALTY

AN ACT to amend and reenact section 39-10-71 of the North Dakota Century Code, relating to the driver of a motor vehicle fleeing or attempting to elude a law enforcement officer.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-10-71 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-71. Fleeing or attempting to elude a peace officer - Penalty.**

1. Any driver of a motor vehicle who willfully fails or refuses to bring the vehicle to a stop, or who otherwise flees or attempts to elude, in any manner, a pursuing police vehicle or peace officer, when given a visual or audible signal to bring the vehicle to a stop, is guilty of a class A misdemeanor for a first offense and a class C felony for a subsequent offense within three years. An individual who violates this section while fleeing after or in the commission of a felony is guilty of a class C felony.
2. A signal complies with this section if the signal is perceptible to the driver and:
  4. a. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the stopping vehicle is appropriately marked showing it to be an official police vehicle; or
  2. b. If not given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the officer is in uniform and prominently displays the officer's badge of office.

Approved March 17, 2003

Filed March 17, 2003

## CHAPTER 331

### HOUSE BILL NO. 1062

(Representatives Metcalf, Kerzman, Severson, Weisz)  
(Senators Nichols, Dever)

## FARM IMPLEMENT MOVEMENT ON HIGHWAYS

AN ACT to amend and reenact subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to width limits and the movement of implements of husbandry.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>162</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-12-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
  - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
  - b. Implements of husbandry being moved by resident farmers, ranchers, governmental entities, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, governmental entities, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
  - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
  - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, commercial movement of portable grain cleaners, and the commercial movement of hay grinders, which may be moved on the highway after obtaining a seasonal permit issued by the highway patrol. The highway patrol shall issue seasonal permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural

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<sup>162</sup> Section 39-12-04 was also amended by section 3 of Senate Bill No. 2213, chapter 307, and section 2 of House Bill No. 1261, chapter 310.

chemical applicators, to any commercial entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The seasonal permit is in lieu of registration requirements for the permit period. No seasonal permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The seasonal permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This seasonal permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

- e. Safety devices that the highway patrol determines are necessary for the safe and efficient operation of motor vehicles may not be included in the calculation of width.
- f. Any nonload carrying safety appurtenance as determined by the highway patrol which extends no more than three inches [7.62 centimeters] from each side of a trailer is excluded from the measurement of trailer width. The width of a trailer is measured across the sidemost load carrying structures, support members, and structural fasteners.
- g. The highway patrol may adopt reasonable rules for those vehicles exempted from the width limitations as provided for in this subsection.

Approved March 27, 2003  
Filed March 28, 2003

## CHAPTER 332

### SENATE BILL NO. 2407

(Senators O'Connell, Fairfield, Trenbeath)  
(Representatives Hunskor, Nelson, Weisz)

## VEHICLE WEIGHT LIMITATIONS

AN ACT to amend and reenact section 39-12-05.3 of the North Dakota Century Code, relating to weight limitations on vehicles.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>163</sup> **SECTION 1. AMENDMENT.** Section 39-12-05.3 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-12-05.3. (Effective through July 31, 2003) Weight limitations for vehicles on highways other than the interstate system.**

1. A person may not operate on a highway that is not part of the interstate system any vehicle with a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, a person may not operate on a highway that is not part of the interstate system any vehicle the gross weight of which exceeds that determined by the formula of:

$$W = 500 \left( \frac{LN}{N-1} + 12N + 36 \right)$$

where W equals the maximum gross weight in pounds on any vehicle or combination of vehicles; L equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and N equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one

<sup>163</sup> Section 39-12-05.3 was also amended by section 4 of House Bill No. 1112, chapter 319.

hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.
6. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled fertilizer spreader if the ~~vehicle does not travel at speeds in excess of thirty miles [48.28 kilometers] per hour when loaded over one-half capacity and the gross weight of a single axle does not exceed eighty twenty-two thousand pounds [38287.39 19979.03 kilograms]~~ and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The gross weight limitations in subsections 1 and 2 do not apply to movement of a self-propelled agricultural chemical applicator if the ~~vehicle does not travel at speeds in excess of thirty miles [48.28 kilometers] per hour when loaded over one-half capacity and the gross weight of a single axle does not exceed forty-five twenty-two thousand pounds [20414.66 19979.03 kilograms]~~ and does not exceed five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. The highway patrol shall issue a seasonal permit for the

commercial movement of vehicles exempted by this subsection. The seasonal permit issued under this subsection or under subdivision d of subsection 1 of section 39-12-04 entitles an individual with the permit to operate a vehicle as allowed by either of these provisions. A seasonal permit issued under this subsection is subject to the requirements of subdivision d of subsection 1 of section 39-12-04.

**(Effective after July 31, 2003) Weight limitations for vehicles on highways other than the interstate system.** A person may not operate on a highway, which is not part of the interstate system, any vehicle:

1. With a single axle that carries a gross weight in excess of twenty thousand pounds [9071.85 kilograms] or a wheel load over ten thousand pounds [4535.92 kilograms]. A wheel may not carry a gross weight over five hundred fifty pounds [249.48 kilograms] for each inch [2.54 centimeters] of tire width. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle. On axles spaced over forty inches [101.60 centimeters] and under eight feet [2.44 meters] apart, the axle load may not exceed seventeen thousand pounds [7711.07 kilograms] per axle, with a maximum of forty-eight thousand pounds [21772.32 kilograms] gross weight on any grouping of three or more axles. The wheel load, in any instance, may not exceed one-half the allowable axle load. Spacing between axles is measured from axle center to axle center.
2. Subject to the limitations imposed by subsection 1 on tires, wheel, and axle loads, the gross weight of which exceeds that determined by the formula of:

$$W = 500 \frac{(LN + 12N + 36)}{N-1}$$

where  $W$  equals the maximum gross weight in pounds on any vehicle or combination of vehicles;  $L$  equals distance in feet between the two extreme axles of any vehicle or combination of vehicles; and  $N$  equals the number of axles of any vehicle or combination of vehicles under consideration. The gross weight on state highways may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms] unless otherwise posted and on all other highways the gross weight may not exceed eighty thousand pounds [36287.39 kilograms] unless designated by local authorities for highways under their jurisdiction for gross weights not to exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. Local authorities are encouraged to assess all roads under their jurisdiction and designate the roads for the appropriate weight limits allowed under this subsection.

3. The gross weight limitations in subsections 1 and 2 do not apply to equipment the director and the state highway patrol approve for exemption. The exemption may not exceed one hundred five thousand five hundred pounds [47854.00 kilograms]. For every vehicle approved for exemption the highway patrol shall issue a nontransferable permit valid for one year. The highway patrol may charge an administrative fee for the permit.
4. The director, and local authorities, as to the highways under their respective jurisdictions, may issue permits authorizing a specific motor

vehicle to exceed the weight limitations stated in subsections 1 and 2 by ten percent. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The permits must provide only for the movement of agricultural products from the field of harvest to the point of initial storage site, and for the collection and transport of solid wastes, during the period from July fifteenth to December first, and for the general movement of products during the period from December first to March seventh. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

5. The director, and local authorities, as to highways under their respective jurisdictions, may issue permits authorizing all vehicles carrying potatoes or sugar beets to exceed weight limitations stated in subsections 1 and 2 by ten percent during the period from July fifteenth to December first. The permits may not provide for a gross weight in excess of one hundred five thousand five hundred pounds [47854.00 kilograms]. The appropriate jurisdictional authority shall establish an appropriate fee for the permits and direct how they shall be issued. The highway patrol shall issue the permits authorized by the director.

Approved April 16, 2003

Filed April 16, 2003

## CHAPTER 333

### HOUSE BILL NO. 1255 (Representatives Dosch, Meier, Weiler) (Senator Dever)

## WINDSHIELD TINTING

AN ACT to amend and reenact section 39-21-39 of the North Dakota Century Code, relating to windshield tinting.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-21-39 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-21-39. Windshield - Must be unobstructed and equipped with wipers - Tinted windows.**

1. ~~Every~~ A motor vehicle must be equipped with a windshield. ~~No person~~ An individual may not drive any motor vehicle with any sign, poster, or other nontransparent material upon the front windshield, side wings, or side or rear windows which obstructs the driver's clear view of the highway or any intersecting highway.
2. The windshield on ~~every~~ a motor vehicle must be equipped with a device for cleaning rain, snow, or other moisture from the windshield, which must be ~~so~~ constructed as to be controlled or operated by the driver of the vehicle.
3. ~~Every~~ The windshield wiper upon a motor vehicle must be maintained in good working order.
4. ~~A person~~ An individual may not operate a motor vehicle with any object, material, or tinting displayed, affixed, or applied on the front windshield or any window unless the object, material, or tinting in conjunction with the ~~window or~~ windshield upon which it is displayed, affixed, or applied has a light transmittance of at least seventy percent or the object, material, or tinting in conjunction with a window other than the windshield upon which it is displayed, affixed, or applied has a light transmittance of at least fifty percent. This subsection does not apply to windows behind the operator if the motor vehicle is equipped with outside mirrors on both sides that meet the requirements of section 39-21-38; ~~nor to front side windows displaying transparent sunscreening material as authorized by competent medical authority.~~

Approved April 18, 2003  
Filed April 18, 2003

## CHAPTER 334

### HOUSE BILL NO. 1193

(Representative Klemin)  
(Senator Trenbeath)

### SAFETY BELT USE

AN ACT to amend and reenact section 39-21-41.4 of the North Dakota Century Code, relating to the use of safety belts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-21-41.4 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-41.4. Use of safety belts required in certain motor vehicles - Enforcement - Evidence.** Subject to the limitations of this section and section 39-21-41.5, a driver may not operate upon a highway a motor vehicle designed for carrying fewer than eleven passengers, which was originally manufactured with safety belts unless each front seat occupant is wearing a properly adjusted and fastened safety belt. This section does not apply to a child in a child restraint or seatbelt in accordance with section 39-21-41.2; to drivers of implements of husbandry; to operators of farm vehicles as defined in subsection 5 of section 39-04-19; to rural mail carriers while on duty delivering mail; to an occupant with a medical or physically disabling condition that prevents appropriate restraint in a safety belt, if a qualified physician states in a signed writing the nature of the condition and the reason restraint is inappropriate; or when all front seat safety belts are in use by other occupants. A physician who, in good faith, provides a statement that restraint would be inappropriate is not subject to civil liability. A violation for not wearing a safety belt under this section is not, in itself, evidence of negligence. The fact of a violation of this section is not admissible in any proceeding other than one charging the violation.

Approved March 25, 2003  
Filed March 25, 2003

## CHAPTER 335

### HOUSE BILL NO. 1359

(Representatives Thorpe, DeKrey, M. Klein)  
(Senators O'Connell, Seymour, Trenbeath)

## COLLECTOR MOTOR VEHICLE AUCTIONS

AN ACT to create and enact a new section to chapter 39-22 of the North Dakota Century Code, relating to collector motor vehicle auctions; and to amend and reenact section 39-22-21 of the North Dakota Century Code, relating to the sale of consignment vehicles.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 39-22 of the North Dakota Century Code is created and enacted as follows:

#### Collector motor vehicle auctions.

1. A person may engage in the business of conducting a collector motor vehicle auction without obtaining a motor vehicle dealer's license as otherwise required by this chapter if:
  - a. Each motor vehicle sold or offered for sale at the auction is a collector, antique, or special interest vehicle;
  - b. The sale is open to the public;
  - c. The person conducts no more than two collector motor vehicle auctions per year;
  - d. The site of the auction is located on property zoned or otherwise approved for this purpose by the appropriate zoning authority; and
  - e. The auction lasts no more than two days.
2. Collector motor vehicle auctions that comply with this section may be conducted any day of the week and sections 39-22-07.1 and 39-22-20 do not apply to motor vehicle dealers who participate in collector motor vehicle auctions.
3. A collector motor vehicle is a vehicle that is at least twenty-five years old; an antique motor vehicle is a vehicle that is at least forty years old; and a special interest vehicle is a vehicle that has an appreciating value because of rarity, originality, or limited production of an anniversary edition.

**SECTION 2. AMENDMENT.** Section 39-22-21 of the North Dakota Century Code is amended and reenacted as follows:

**39-22-21. Consignment vehicles - Penalty.** A motor vehicle dealer may sell a motor vehicle consigned to the dealer by a motor vehicle owner, except when the owner is a licensed motor vehicle dealer, under the terms of a consignment contract between the owner and the dealer. However, a motor vehicle dealer may sell a collector motor vehicle consigned to the dealer by an owner that is a licensed motor vehicle dealer. The consignment contract form must specify the terms of the agreement between the owner and the dealer, specify the location of the motor vehicle certificate of title, and must be approved by the department. ~~Any~~ A person violating this section must be assessed a one hundred dollar fee by the department for a first violation and a two hundred dollar fee by the department for a second violation within two years of the first violation. The department shall revoke the license of a motor vehicle dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

Approved March 17, 2003  
Filed March 17, 2003

## CHAPTER 336

### SENATE BILL NO. 2162

(Senator J. Lee)

## SNOWMOBILE REGISTRATION FEES

AN ACT to amend and reenact section 39-24-03 of the North Dakota Century Code, relating to snowmobile registration fees.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 39-24-03 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-24-03. Registration - Application - Issuance - Fees - Renewal.**

1. Application for registration must be made to the department in a form as the department shall prescribe and furnish and must state the name and address of every owner of the snowmobile and be signed by at least one owner. A copy of the application must be carried on the person when operating and shall serve as evidence of registration for a period of not more than thirty days from the date of application.
2. Upon receipt of the application and the appropriate fee ~~as hereinafter provided~~, the department shall register a snowmobile ~~must be registered~~ and assign a registration number and a certificate of registration assigned. The registration number must be at least one and one-half inches [3.81 centimeters] in height and of a reflectorized material and must be securely affixed on each side of the forward half of the snowmobile in ~~such a~~ position as to provide clear legibility for identification. The certificate of registration must include information regarding the make, year, serial number, and name and address of the owner. The fee for registration of each snowmobile must be ~~three~~ five dollars for a any portion of the registration period and the registration period of is for two years beginning October first of each odd-numbered year effective October 1, 1991. To implement this section, on January 1, 1992, the department shall register each snowmobile registered before July 1, 1991, for a one-time period of twenty-one months. The fee for initial registration of each snowmobile registered on and after October first of the second year of the two-year registration period must also be three dollars. The fee for a duplicate or replacement registration number or registration card which is lost, mutilated, or becomes illegible may not exceed ~~three~~ five dollars. In addition, in each year that fees are collected for the unsatisfied judgment fund there must be assessed a fee of one dollar per year for each snowmobile registered, which must be placed in the unsatisfied judgment fund. For each snowmobile registered under the provisions of this chapter, there must be assessed a snowmobile trail tax in the amount of ~~seventeen~~ thirty-five dollars.
3. Every owner of a snowmobile shall renew the registration in a manner as the department shall prescribe, upon payment of the same registration fees provided in this section.

4. Upon application for registration as prescribed in this section, any snowmobile dealer as defined in section 39-24-01 must be issued registration numbers distinctively marked as dealer's registration numbers upon payment of the appropriate fee as prescribed in this section. The dealer's registration numbers must be used only on snowmobiles owned by the dealership.

Approved March 19, 2003  
Filed March 19, 2003

**CHAPTER 337****HOUSE BILL NO. 1292**

(Representatives Nelson, Delmore, Headland, Hunskor)  
(Senators Heitkamp, Trenbeath)

**SNOWMOBILE TRAIL ACCESS FEE**

AN ACT to amend and reenact sections 39-24-04 and 39-24-11 of the North Dakota Century Code, relating to a snowmobile access fee; to provide a penalty; to provide an appropriation; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 39-24-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-24-04. Exemption from registration - Exemption from fees.**

1. A registration number must be issued without the payment of a fee for snowmobiles owned by the state of North Dakota or any of its political subdivisions upon application for the registration.
2. No registration or fees may be required of:
  - a. Snowmobiles owned and used by the United States or another state or its political subdivisions.
  - b. Snowmobiles registered in a country other than the United States and temporarily used within this state.
  - c. Snowmobiles validly licensed in another state and which have not been within this state for more than thirty consecutive days.
  - d. Snowmobiles operated upon lands owned or leased by the snowmobile owner.
  - e. Snowmobiles incapable of speeds in excess of ten miles per hour and with an engine displacement of less than one hundred cubic centimeters.
3. If a snowmobile is exempt from registration under subdivision b or c of subsection 2 of this section, the owner is required to display on the snowmobile a decal received upon payment of a fifteen dollar per year trail access fee. Fees collected under this subsection must be deposited in the state snowmobile fund.

<sup>164</sup> **SECTION 2. AMENDMENT.** Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

**39-24-11. Penalties.** Any person who violates subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register or fails to display a decal as required by ~~section~~ sections 39-24-02 and 39-24-04 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

**SECTION 3. APPROPRIATION.** There is appropriated out of moneys in the state snowmobile fund in the state treasury, not otherwise appropriated, the sum of \$4,995, or so much of the sum as may be necessary, to the parks and recreation department for the purposes of establishing and administering the decal program for snowmobiles registered in another state or country, for the biennium beginning July 1, 2003, and ending June 30, 2005.

**SECTION 4. EFFECTIVE DATE.** Section 1 of this Act becomes effective on August 1, 2005.

Approved April 21, 2003  
Filed April 21, 2003

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<sup>164</sup> Section 39-24-11 was also amended by section 2 of Senate Bill No. 2080, chapter 338.

**CHAPTER 338****SENATE BILL NO. 2080**

(Transportation Committee)

(At the request of the Parks and Recreation Department)

**SNOWMOBILE OPERATION NEAR INTERSTATE  
HIGHWAY**

AN ACT to amend and reenact sections 39-24-09 and 39-24-11 of the North Dakota Century Code, relating to snowmobile operation within the right of way of an interstate highway; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-24-09 of the North Dakota Century Code is amended and reenacted as follows:

**39-24-09. Rules for operation of snowmobiles.**

1. No person may operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any road, street, or highway in this state except as provided pursuant to this chapter. No snowmobile may be operated at any time within the right of way of any interstate highway within this state except ~~for emergency purposes~~ as provided in this section.
2. A snowmobile may make a direct crossing of a non-interstate street or highway provided:
  - a. The crossing is made at an angle of approximately ninety degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing;
  - b. The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway;
  - c. The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and
  - d. In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway.
3. No snowmobile may be operated unless it is equipped with at least one headlamp, one taillamp, and brakes, all in working order, which conform to standards prescribed by rule of the director pursuant to the authority vested in the director by this code and this chapter.
4. The emergency conditions under which a snowmobile may be operated other than as provided by this chapter must be such as to render the use of an automobile impractical under such conditions at such period of time and location.

5. It is unlawful for any person to drive or operate any snowmobile in the following ways which are declared to be unsafe and a public nuisance:
  - a. At a rate of speed greater than reasonable or proper under all the surrounding circumstances.
  - b. In a careless, reckless, or negligent manner so as to endanger the person or property of another or to cause injury or damage to such person or property.
  - c. While under the influence of intoxicating liquor or a drug as defined in section 39-24.1-01, or a combination thereof.
  - d. Without a lighted headlamp and taillamp when required for safety.
  - e. In any tree nursery or planting in a manner which damages or destroys growing stock.
  - f. Without a manufacturer-installed or equivalent muffler in good working order and connected to the snowmobile exhaust system.
  - g. Upon any private land where the private land is posted by the owner or tenant prohibiting trespassing. The name of the person posting the land must appear on each sign in legible characters. The posted signs must be readable from the outside of the land and must be placed conspicuously at a distance of not more than eight hundred eighty yards [804.68 meters] apart, provided further that as to land entirely enclosed by a fence or other enclosure, posting of signs at or on all gates through the fence or enclosure constitutes a posting of all the enclosed lands.
6. It is unlawful for any person to operate a snowmobile pursuant to chapter 39-24 without having in possession a valid driver's license or permit, except as provided by section 39-24-09.1.
7. When snowmobiles are operated within the right of way of any road, street, or highway of this state pursuant to this chapter, during times or conditions that warrant the use of lights, such snowmobiles shall travel in the same direction as the direction of motor vehicles traveling on the side of the roadway immediately adjacent to the side of the right of way traveled by the snowmobile.
8. It is unlawful for any person to operate a snowmobile within a highway right of way as defined in subsection 38 of section 24-01-01.1 between April first and November first of any year.
9. No snowmobile may be operated at any time within the right of way of any highway within this state while towing a sled, skid, or other vehicle, unless the sled, skid, or other vehicle is connected to the snowmobile by a hinged swivel and secure hitch.
10. No person under the age of eighteen years may operate, ride, or otherwise be propelled on a snowmobile unless the person wears a safety helmet meeting United States department of transportation standards.

11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a person operating a snowmobile shall provide proof of liability insurance to that officer within twenty days.
  
12. A snowmobile may not be operated within the right of way of any interstate highway within this state except:
  - a. For emergency purposes; or
  - b. Across an interstate highway on an overpass or underpass, except where otherwise prohibited by law or by signing, provided the snowmobile crosses on the extreme right side of the overpass or underpass.

<sup>165</sup> **SECTION 2. AMENDMENT.** Section 39-24-11 of the North Dakota Century Code is amended and reenacted as follows:

**39-24-11. Penalties.** Any person who violates subsection 12 of section 39-24-09 must be assessed a fee of one hundred dollars. Any person who violates subdivision b or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates subsection 11 of section 39-24-09 is guilty of a class B misdemeanor and must be assessed a fine of at least one hundred dollars. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of fifty dollars. If the person provides proof of registration after the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

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<sup>165</sup> Section 39-24-11 was also amended by section 2 of House Bill No. 1292, chapter 337.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 19, 2003

Filed March 19, 2003