

# MOTOR VEHICLES

## CHAPTER 266

### SENATE BILL NO. 2287

(Senators Berry, Flakoll, Luick)  
(Representatives Gruchalla, Guggisberg, Porter)

AN ACT to amend and reenact subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to emergency lights on response vehicles.

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

<sup>92</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Authorized emergency vehicles":
  - a. "Class A" authorized emergency vehicles means:
    - (1) Vehicles of a governmentally owned fire department.
    - (2) Vehicles when operated by or under the control of a police officer having authority to enforce the provisions of this title or by a salaried employee of a municipal police department within the municipality or by a sheriff or deputy sheriff not including special deputy sheriffs, or by the director of the department of corrections and rehabilitation and the director's authorized agents who have successfully completed training in the operation of class A authorized emergency vehicles.
    - (3) Vehicles clearly identifiable as property of the department of corrections and rehabilitation when operated or under the control of the director of the department of corrections and rehabilitation.
    - (4) Ambulances.
    - (5) Vehicles operated by or under the control of the director, district deputy director, or a district deputy game warden of the game and fish department.
    - (6) Vehicles owned or leased by the United States and used for law enforcement purposes.
    - (7) Vehicles designated for the use of the adjutant general or assistant adjutant general in cases of emergency.

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<sup>92</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1103, chapter 271, and section 1 of House Bill No. 1256, chapter 272.

- (8) Vehicles operated by or under the control of the director of the parks and recreation department.
  - (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.
  - (10) Vehicles operated by or under the control of the state forester.
  - (11) Vehicles operated by or under the control of the bureau of criminal investigation and used for law enforcement purposes.
- b. "Class B" authorized emergency vehicles means wreckers and such other emergency vehicles as are authorized by the local authorities.
- c. "Class C" authorized emergency vehicles means:
- (1) Vehicles authorized by the state division of homeland security or local division of emergency management organizations.
  - (2) Vehicles used by volunteer firefighters while performing their assigned disaster and emergency responsibilities.
  - (3) Vehicles, other than ambulances, used by emergency medical services personnel.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 267

### HOUSE BILL NO. 1113

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact sections 39-04-10.11 and 39-04-10.12, subsection 3 of section 39-04-10.13, subdivision o of subsection 2 of section 39-04-18, subsection 3 of section 39-04-19, and subsection 4 of section 39-22.3-04 of the North Dakota Century Code, relating to number plates, motor vehicle registration fees and miles tax, and dealer's licenses.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.11 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-10.11. Firefighter's association plates.**

The director, in cooperation with the North Dakota firefighter's association, shall design a decorative decal that contains an insignia representing service in the pursuit of firefighting and which is 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 annual fee of fifteen dollars for deposit in the highway fund, the applicant is entitled to issuance of the decals and plates. However, the director may not issue the decal and plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.84 kilograms]. A registrant is eligible for distinctive number plates under this section if the registrant is a member of the North Dakota firefighter's association. On request of the director, the North Dakota firefighter's association shall certify those members of the North Dakota firefighter's association eligible to receive the decals and plates. On termination of the registrant's eligibility, the registrant shall return the decals and plates to the director, who shall reissue for a fee of not more than five dollars another number plate to which that registrant is entitled under this chapter. The director and the North Dakota firefighter's association shall cooperate in establishing procedures to implement this section.

**SECTION 2. AMENDMENT.** Section 39-04-10.12 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-04-10.12. North Dakota future farmers of America 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 registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.84 kilograms].

**SECTION 3. AMENDMENT.** Subsection 3 of section 39-04-10.13 of the North Dakota Century Code is amended and reenacted as follows:

3. Upon proper application for a plate in the organization number plate program and payment of all other fees required under this chapter for registration of the motor vehicle and payment of an additional annual fee of twenty-five dollars, a qualified applicant is entitled to issuance of a certain organization number plate. However, the director may not issue the plates to the owner of a passenger motor vehicle or a truck the registered gross weight of which ~~equals or~~ exceeds twenty thousand pounds [9071.85 kilograms].

<sup>93</sup> **SECTION 4. AMENDMENT.** Subdivision o of subsection 2 of section 39-04-18 of the North Dakota Century Code is amended and reenacted as follows:

- o. Passenger motor vehicles, house cars, or pickup trucks not exceeding ~~tent~~twenty thousand pounds [~~4535.92~~9071.84 kilograms] registered gross weight owned and operated by a resident who, while serving in the United States armed forces, was a prisoner of war and has received an honorable discharge from the United States armed forces; provided, however, that the vehicles display a distinctive license plate issued by the department upon the payment of five dollars. This exemption also applies to any passenger motor vehicle, house car, or pickup truck not exceeding ~~tent~~twenty thousand pounds [~~4535.92~~9071.84 kilograms] registered gross weight subsequently purchased or acquired by such a former prisoner of war; provided, that the exemption provided by this subdivision is allowed only with respect to one motor vehicle owned by such a former prisoner of war at any one time.

**SECTION 5. AMENDMENT.** Subsection 3 of section 39-04-19 of the North Dakota Century Code is amended and reenacted as follows:

3. Motor vehicles acquired by disabled veterans under the provisions of Public Law 79-663 [38 U.S.C. 3901] are exempt from the payment of state sales or use tax and, if paid, such veterans are entitled to a refund. This exemption also applies to any passenger motor vehicle or pickup truck not exceeding ~~twenty~~twenty-six thousand pounds [~~9071.84~~11793.40 kilograms] registered gross weight but shall apply to no more than two such motor vehicles owned by a disabled veteran at any one time.

**SECTION 6. AMENDMENT.** Subsection 4 of section 39-22.3-04 of the North Dakota Century Code is amended and reenacted as follows:

4. For having violated any law relating to the sale, distribution, or financing of ~~motorcycles~~motor-powered recreational vehicles.

Approved April 11, 2011  
Filed April 11, 2011

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<sup>93</sup> Section 39-04-18 was also amended by section 1 of Senate Bill No. 2207, chapter 268, and section 2 of House Bill No. 1217, chapter 447.

## CHAPTER 268

### SENATE BILL NO. 2207

(Senators Lyson, Wardner)  
(Representatives Kempenich, Rust)

AN ACT to create and enact section 39-04-18.2 and a new subsection to section 57-40.3-04 of the North Dakota Century Code, relating to temporary motor vehicle registration and excise tax; to amend and reenact subdivisions c and e of subsection 2 of section 39-04-18, subsection 2 of section 39-06.1-06, and section 39-06.1-08 of the North Dakota Century Code, relating to motor vehicle registration; to provide legislative intent; and to declare an emergency.

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

<sup>94</sup> **SECTION 1. AMENDMENT.** Subdivisions c and e of subsection 2 of section 39-04-18 of the North Dakota Century Code are amended and reenacted as follows:

- c. Motor vehicles registered in any other state or territory when coming into this state a distance not exceeding twenty miles [32.19 kilometers]; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state ~~for any purpose and are not gainfully employed or stationed in this state.~~ Nor may such vehicles be required to pay any other tax, and no registration fee or tax may be required when such vehicles do not leave the incorporated limits of any city while in the state of North Dakota within a zone circumscribed by a line running parallel to the corporate limits of any city or contiguous cities and twenty miles [32.19 kilometers] distant therefrom. This section does not prevent trucks from coming into the state such distance as shall be necessary to reach the nearest railway shipping station. For purposes of this subdivision, an individual is a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.
- e. Passenger motor vehicles registered in any other state or territory; provided, however, that such motor vehicles have displayed thereon the current license plates issued by the state or territory in which they are registered and provided further that the owners or operators thereof are not residents of this state ~~for any purpose and are not gainfully employed or stationed in this state.~~ For purposes of this subdivision, an individual is

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<sup>94</sup> Section 39-04-18 was also amended by section 4 of House Bill No. 1113, chapter 267, and section 2 of House Bill No. 1217, chapter 447.

a resident of this state if the individual is gainfully employed or engages in any trade, profession, or occupation within this state and owns, leases, or rents a place of residence or otherwise lives within this state for the purposes of employment, or regardless of domicile or any other circumstance, remains in this state for a period of at least ninety consecutive days. For purposes of this subdivision, a resident does not include a student at a university, college, or technical school in this state or a daily commuter from another jurisdiction if that jurisdiction exempts the vehicle of a daily commuter from this state from registration in that jurisdiction under a reciprocity agreement.

**SECTION 2.** Section 39-04-18.2 of the North Dakota Century Code is created and enacted as follows:

**39-04-18.2. Temporary motor vehicle registration - Fees.**

1. Any owner, lessee, or operator of a motor vehicle who is employed in this state on a temporary or full-time basis may choose to purchase a temporary registration permit in lieu of registering the vehicle pursuant to section 39-04-18, if the vehicle displays a valid registration and license plate from another jurisdiction and is properly insured. Application for the temporary registration permit must be made in the manner and form prescribed by the department. The temporary registration permit must bear a distinctive number assigned to the vehicle and an expiration date. At all times the operator shall ensure that the temporary registration permit is displayed and clearly visible on the vehicle in a manner prescribed by the department. Motor vehicles temporarily registered under this section may be registered without a title transfer or imposition of motor vehicle excise tax. The operator shall keep evidence of registration from the other jurisdiction in the motor vehicle and provide evidence of registration to a law enforcement officer or the department, upon request.
2. Motor vehicles temporarily registered in this state must be furnished a permit as follows:
  - a. Passenger vehicles, pickups, vans, and trucks not exceeding twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of sixty dollars for six months or one hundred twenty dollars for twelve months of required registration.
  - b. Trucks or combinations of trucks and trailers weighing more than twenty thousand registered gross weight pounds [9071.84 kilograms] temporarily registered in this state must be furnished a permit upon payment of the following fees:

<u>Weight</u>	<u>Six-Month Fee</u>	<u>Twelve-Month Fee</u>
<u>20,001 - 42,000</u>	<u>\$220</u>	<u>\$440</u>
<u>42,001 - 62,000</u>	<u>\$380</u>	<u>\$760</u>
<u>62,001 - 82,000</u>	<u>\$530</u>	<u>\$1,060</u>
<u>82,001 - 105,500</u>	<u>\$900</u>	<u>\$1,800</u>

- c. Motorcycles temporarily registered in this state must be furnished a permit upon payment of thirty dollars for six months or sixty dollars for twelve months.

- d. An additional fee of ten dollars applies to each temporary registration permit.

<sup>95</sup> **SECTION 3. 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, a fee of twenty-five dollars.
  - d. A violation of subsection 1 of section 39-12-02, a fee of one hundred dollars.
  - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.
  - f. A violation of subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, a fee of one hundred dollars.

**SECTION 4. AMENDMENT.** Section 39-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-08. Nonmoving violation defined.**

For the purposes of section 39-06.1-06, a "nonmoving violation" means:

1. A violation of section 39-04-11, subsection 1 of section 39-04-37 by an individual by becoming a resident of this state, subsection 6 of section 39-06-17, and section 39-06-44, 39-06-45, 39-10-47, 39-10-49, 39-10-50, 39-10-51, 39-10-54.1, 39-21-08, 39-21-10, 39-21-11, or 39-21-14, or a violation of any municipal ordinance equivalent to the foregoing sections.
2. A violation, discovered at a time when the vehicle is not actually being operated, of section 39-21-03, 39-21-05, 39-21-13, 39-21-19, 39-21-32, 39-21-37, 39-21-39, or 39-21-44.2, or a violation of any municipal ordinance equivalent to the foregoing sections.

<sup>96</sup> **SECTION 5.** A new subsection to section 57-40.3-04 of the North Dakota Century Code is created and enacted as follows:

Motor vehicles registered in another state or territory, if the motor vehicle is registered in this state under section 39-04-18.2.

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<sup>95</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of Senate Bill No. 2157, chapter 280, and section 1 of House Bill No. 1195, chapter 279.

<sup>96</sup> Section 57-40.3-04 was also amended by section 1 of House Bill No. 1153, chapter 474, and section 4 of House Bill No. 1217, chapter 447.

**SECTION 6. LEGISLATIVE INTENT - TEMPORARY MOTOR VEHICLE REGISTRATION REQUIREMENTS - MARKETING AND AWARENESS CAMPAIGN.**

It is the intent of the sixty-second legislative assembly that the department of transportation not incur more than \$50,000 of expenses for a marketing and awareness campaign for temporary motor vehicle registration requirements, for the biennium beginning July 1, 2011, and ending June 30, 2013.

**SECTION 7. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 269

### SENATE BILL NO. 2188

(Senators G. Lee, Oehlke, Wanzek)  
(Representatives Ruby, N. Johnson, Delmore)

AN ACT to amend and reenact sections 39-05-02.2 and 39-05-03 of the North Dakota Century Code, relating to exclusions from the certificate of title requirement for vehicles regularly engaged in interstate transportation of persons or property.

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

**SECTION 1. AMENDMENT.** Section 39-05-02.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-05-02.2. Exclusions from the certificate of title requirement.**

No certificate of title need be obtained for:

1. A vehicle owned by the United States unless it is registered in this state.
2. A vehicle owned by a manufacturer or dealer and held for sale, even though incidentally moved on the highway or used for purposes of testing or demonstration, or a vehicle used by a manufacturer solely for testing.
3. A vehicle owned by a nonresident of this state and not required by law to be registered in this state.
4. A vehicle regularly engaged in interstate transportation of persons or property that is registered in accordance with the international registration plan and for which a currently effective certificate of title has been issued in another state that has a reciprocal excise tax agreement with this state.
5. A vehicle moved solely by human or animal power.
6. Implements of husbandry.
7. Special mobile equipment.
8. A self-propelled invalid wheelchair or invalid tricycle.
9. Any vehicle which is driven or moved upon a highway only for the purpose of crossing the highway from one property to another. The vehicle shall cross the highway at an angle of approximately ninety degrees to the direction of the highway.
10. Other vehicles not required to be registered in this state or not required to display distinctive plates.
11. A manufactured home with respect to which the requirements of subsections 1 through 3 of section 39-05-35, as applicable, have been satisfied.

**SECTION 2. AMENDMENT.** Section 39-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-03. Department not to license vehicle until application is made for a certificate of title.**

The department may not register or renew the registration for license of any vehicle unless and until an application is made for an official certificate of title for the vehicle, or unless satisfactory evidence is presented that a certificate of title for the vehicle has been issued previously to the lienholder or owner by the department or when engaged in interstate commerce and registered in accordance with the international registration plan the vehicle is titled in another state.

Approved April 19, 2011  
Filed April 19, 2011

## CHAPTER 270

### SENATE BILL NO. 2165

(Senator Nodland)  
(Representative Ruby)

AN ACT to amend and reenact subsection 9 of section 39-05-22 of the North Dakota Century Code, relating to the department of motor vehicle record retention.

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

**SECTION 1. AMENDMENT.** Subsection 9 of section 39-05-22 of the North Dakota Century Code is amended and reenacted as follows:

9. Such file of surrendered certificates of title and the records referred to in subsections 6, 7, and 8 must be permanently maintained ~~for a period of five years or for such further time that the director may determine.~~

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 271

### HOUSE BILL NO. 1103

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 39-01-01 and section 39-06-01.2 of the North Dakota Century Code, relating to definitions and anatomical gifting; and to amend and reenact subsection 1 of section 39-06-01, subsection 1 of section 39-06-01.1, subsection 1 of section 39-06-03.1, subsection 2 of section 39-06-07, section 39-06-07.2, subsection 1 of section 39-06-14, sections 39-06-24, 39-06-35, 39-06-36, and 39-06-40, subsection 3.1 of section 39-06.1-10, subsection 2 of section 39-06.2-10, sections 39-06.2-10.3 and 39-10.2-06, subsection 2 of section 39-16.1-07, subsection 2 of section 39-27-05, and subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code, relating to nondriver photo identification, operator's licenses, and motorcycle safety and body requirements.

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

<sup>97</sup> **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Licensed health care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant who is licensed, certified, or registered in accordance with laws and regulations in this or another state.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-01 of the North Dakota Century Code is amended and reenacted as follows:

1. A person, unless expressly exempted in this section, may not drive any motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless the person has a valid license as an operator under the provisions of this chapter or a temporary operator's permit issued under chapter 39-20. A person may not receive an operator's license unless and until that person surrenders to the director all operator's licenses and permits issued to the person by any jurisdiction. When a license issued by another jurisdiction is surrendered, the director shall notify the issuing jurisdiction of its surrender. A person may not have more than one valid operator's license at any time.

**SECTION 3. AMENDMENT.** Subsection 1 of section 39-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall cancel the permit or license to operate a motor vehicle of an individual who has committed acts resulting in an accumulated point total in excess of five points as provided for a violation under section 39-06.1-10 or

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<sup>97</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1256, chapter 272, and section 1 of Senate Bill No. 2287, chapter 266.

has committed an alcohol-related offense or a drug-related offense while operating a motor vehicle, if:

- a. The acts or offenses were committed while the individual was a minor; and
- b. The individual admitted the violation, was found to have committed the violation by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense.

**SECTION 4.** Section 39-06-01.2 of the North Dakota Century Code is created and enacted as follows:

**39-06-01.2. Anatomical gifting.**

The application for nondriver photo identification cards and driver's licenses issued to operators must include a statement making an anatomical gift and provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card or license unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.

**SECTION 5. AMENDMENT.** Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. Within thirty days from receipt of a complete application that includes the applicant's social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. ~~The application must provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.~~ If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age. Subject to subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain such other information as the director may require to improve identity security. The director may require an applicant for an identification card to provide a social security card and proof of residence address.

**SECTION 6. AMENDMENT.** Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. ~~The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06-6.~~ The application must contain such other information as the director may require to improve identity security. The director may require an applicant for a license or instruction permit to provide a social security card and proof of residence address.

<sup>98</sup> **SECTION 7. AMENDMENT.** Section 39-06-07.2 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-07.2. Medical advice - Use by director.**

1. The director is authorized to seek professional medical advice from ~~any physician or optometrist authorized to practice in this state~~ a licensed health care provider and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses ~~pursuant to~~ under this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.
2. In addition to advice sought and received ~~pursuant to~~ under subsection 1, the director may consider information and advice received from an individual applicant's or driver's personal ~~physician or optometrist~~ licensed health care provider. Any examination and report requested by the applicant or driver or required to be taken and provided by the director ~~pursuant to~~ under this chapter must be at the expense of the applicant or driver.
3. Any ~~physician or optometrist~~ licensed health care provider providing advice to the director or director's authorized agent ~~pursuant to~~ under subsection 1 ~~shall~~ does not incur ~~any~~ liability for any opinion, recommendation, or advice provided.
4. Advice and information received by the director or director's authorized agent ~~pursuant to~~ under subsection 1 which relates to an individual applicant or driver is for the confidential use of the director or director's authorized agent in making decisions on the individual's qualifications as a driver, and the information may not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.
5. General advice and information received by the director or director's authorized agent ~~pursuant to~~ under this section, in addition to other sources of information, may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.

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<sup>98</sup> Section 39-06-07.2 was also amended by section 1 of Senate Bill No. 2143, chapter 273.

<sup>99</sup> **SECTION 8. 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. 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 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.~~ No license is valid until it has been signed by the licensee with the licensee's usual signature. 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.

**SECTION 9. AMENDMENT.** Section 39-06-24 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-24. Authority to cancel licenses.**

The director shall cancel any operator's license, permit, or nondriver photo identification card upon determining that the person is not entitled to the issuance of the document under the laws of this state or that said person failed to give the required or correct information on the application or the fee was in the form of an insufficient fund or no-account check or a credit or debit card in which the transaction was canceled by the applicant before the department received correct payment. The making of a false statement in any application for an operator's license, permit, or nondriver photo identification card, concerning the applicant's age or the prior loss of driving privileges through a cancellation, suspension, revocation, or similar sanction in any state, is grounds for the director to cancel any document or privilege issued on the basis of the application.

**SECTION 10. AMENDMENT.** Section 39-06-35 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>99</sup> Section 39-06-14 was also amended by section 1 of House Bill No. 1109, chapter 274, and section 1 of Senate Bill No. 2244, chapter 275.

### **39-06-35. Period of suspension.**

When the period of suspension imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the director a reinstatement fee of fifty dollars, or twenty-five dollars if the suspension was the result of a suspension under subsection 4, 5, or 7 of section 39-06-03 or subsection 2 of section 39-06-32, or one hundred dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until compliance with subsection 3.1 of section 39-06.1-10. Upon payment of the reinstatement fee the license must be returned to the operator. If payment of the reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

**SECTION 11. AMENDMENT.** Section 39-06-36 of the North Dakota Century Code is amended and reenacted as follows:

### **39-06-36. Restoration of revoked licenses.**

Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked is not entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period such person may make application for a new license as provided by law, but the director may not then issue a new license unless and until the director is satisfied after investigation of the individual's driving records, driving habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. A person whose license or privilege to drive a motor vehicle has been revoked must pay to the director a revocation reinstatement fee of fifty dollars, or one hundred dollars if the revocation was imposed for violation of subsection 5 of section 39-06-17, section 39-06-31, 39-06-43, or 39-20-04, in addition to any license renewal fee, for issuance of a new license. If payment of a reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. Until the reinstatement fee is paid the license and privilege to drive a motor vehicle remain under revocation. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, reexamination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1, or 39-20.

**SECTION 12. AMENDMENT.** Section 39-06-40 of the North Dakota Century Code is amended and reenacted as follows:

### **39-06-40. Unlawful use of license - Penalty.**

It is a class B misdemeanor for any person:

1. To display or cause or permit to be displayed or have in possession any canceled, revoked, fictitious, or fraudulently altered operator's license, permit, or nondriver photo identification card;
2. To lend one's operator's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another;

3. To display or represent as one's own any operator's license, permit, or nondriver identification card not issued to that person;
4. To fail or refuse to surrender to the director upon demand any operator's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled;
5. To permit any unlawful use of an operator's license, permit, or nondriver photo identification card issued to that person; or
6. To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

The director upon receiving a record of conviction or other satisfactory evidence of the violation of this section shall ~~immediately~~ revoke within five days, the person's operator's license, driving privileges, permit, or nondriver photo identification card. The period of revocation is at the discretion of the director, not to exceed six months.

<sup>100</sup> **SECTION 13. AMENDMENT.** Subsection 3.1 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 3.1. a. If the director is informed by a court that a person has been convicted of violating section 39-08-01, or equivalent ordinance, the director, subject to the offender's opportunity for hearing under subsection 1, ~~may not restore the operator's license to the offender~~ shall suspend that person's driving privileges until the offender furnishes to the director the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require either an education or treatment program or that the offender has physically attended the prescribed program and has complied with the attendance rules. The director shall send notice to the offender informing the offender of the provisions of this subsection.
- b. If within the seven years preceding the most recent violation of section 39-08-01, or equivalent ordinance, the offender has previously violated section 39-08-01, or equivalent ordinance, at least three times, the ~~director may restore driving privileges to the offender~~ driving privileges shall be suspended and can be restored only after that person has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol-related or drug-related offense for two consecutive years after completion of treatment.

**SECTION 14. AMENDMENT.** Subsection 2 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, 7, 9, or 11, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed while operating a commercial motor vehicle after July 1, 1989, may be considered in applying this subsection. Only offenses committed while

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<sup>100</sup> Section 39-06.1-10 was also amended by section 6 of House Bill No. 1256, chapter 272.

operating a noncommercial motor vehicle after August 1, 2003, may be considered in applying this subsection.

**SECTION 15. AMENDMENT.** Section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-06.2-10.3. Action following test result for a resident driver.**

If a person submits to a test under section 39-06.2-10.2 and the test shows that person to have an alcohol concentration of at least four 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 commercial motor vehicle, the following procedures apply:

1. When a breath sample test result derived under section 39-20-07 reveals a resident driver to have an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer shall immediately ~~take possession of the person's commercial driver's license. The law enforcement officer shall~~ issue the driver an out-of-service order as provided for in section 39-06.2-10.9. If the driver then has valid driving privileges, the law enforcement officer must issue to the driver a temporary driver's permit, in accordance with section 39-06.2-10.8.
2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample 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 sample by the director of the state crime laboratory or the director's designee showing that person had an alcohol concentration of at least four 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 commercial driver's license or permit and, within twenty four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license,~~ issue to that person a temporary driver's permit according to section 39-06.2-10.8.
3. The halting officer, within five days of the issuance of the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and the person's commercial driver's license taken under subsection 1 or 2. If the person was issued a temporary driver'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 commercial motor vehicle while in violation of section 39-06.2-10.1, that the person was lawfully detained, 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 four one-hundredths of one percent by weight. In addition to the commercial driver's license and report, the law enforcement officer must 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 or urine test for all tests administered at the direction of the officer.

**SECTION 16. AMENDMENT.** Section 39-10.2-06 of the North Dakota Century Code is amended and reenacted as follows:

**39-10.2-06. Equipment for motorcycle riders.**

1. No person under the age of eighteen years may operate or ride upon a motorcycle unless ~~protective headgear, which complies with standards established by the department,~~ a safety helmet meeting United States department of transportation standards is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear ~~protective headgear,~~ a safety helmet, any passenger must also wear ~~protective headgear,~~ a safety helmet regardless of the age of the passenger.
2. This section does not apply to persons riding within an enclosed cab or on a golf cart.
3. No person may operate a motorcycle if a person under the age of eighteen years is a passenger upon that motorcycle and is not wearing ~~protective headgear,~~ a safety helmet as provided in subsection 1.

**SECTION 17. AMENDMENT.** Subsection 2 of section 39-16.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while the person's license or privilege to drive is under suspension for a violation requiring a license or privilege to drive suspension of at least ninety-one days or revocation, the license or driving privilege must ~~remain~~ be suspended or revoked and no license may be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.

**SECTION 18. AMENDMENT.** Subsection 2 of section 39-27-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Tires on two-wheel motorcycles and the ~~front~~ single tire on the front or rear of a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings. Each tire on the front or rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half the front or rear axle gross axle weight rating.

**SECTION 19. AMENDMENT.** Subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code are amended and reenacted as follows:

2. The rear wheel of a two-wheel motorcycle must track behind the front wheel within one inch [2.54 centimeters] with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the ~~two wheels mounted on the rear axle must have a wheel track distance no less than thirty inches [76.2 centimeters]~~ and the midpoint of the rear wheel track distance must be within one inch [2.54 centimeters] of the ~~front~~ midpoint of the front or rear wheel track distance must be within one inch [2.54 centimeters] of the single front or single rear wheel track when the

vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.

5. Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering, and capable of withstanding a minimum force of one hundred pounds [45.36 kilograms] applied to each handgrip in any direction. Handlebar grips may not be located above the shoulder height of the seated operator ~~and must be capable of vertical adjustment~~. The handlebars must provide a minimum of eighteen inches [45.72 centimeters] between grip after final assembly.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 272

### HOUSE BILL NO. 1256

(Representatives Keiser, Dahl, Nathe, Ruby, Gruchalla)

AN ACT to create and enact a new subsection to section 39-01-01, a new paragraph to subdivision b of subsection 3 of section 39-06.1-10, and a new section to chapter 39-08 of the North Dakota Century Code, relating to demerit points and using an electronic communication device; to amend and reenact subsection 1 of section 39-06-03 and sections 39-06-04, 39-06-17, and 39-06.1-09 of the North Dakota Century Code, relating to a graduated operator's license and a moving violation; and to provide for application.

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

<sup>101</sup> **SECTION 1.** A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Electronic communication device" means an electronic device, including a wireless telephone, personal digital assistant, a portable or mobile computer or other device, and video display equipment. The term does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

1. To any person who is under the age of sixteen years, except that the director may issue a restricted permit or license ~~as hereinafter provided in~~ under sections 39-06-05 and 39-06-17 to any person who is less than sixteen years of age.

**SECTION 3. AMENDMENT.** Section 39-06-04 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-04. Instruction permit.**

1. Any ~~person~~ resident of this state who is at least fourteen years of age may apply to the director for ~~an~~ a class D instruction permit.
2. The director may issue ~~to the applicant an~~ a class D instruction permit that entitles the applicant while having ~~such~~ the permit in the permittee's immediate possession to drive a motor vehicle upon the public highways ~~for a period of one year when,~~ if the individual:
  - a. Has successfully passed a standard written rules of the road knowledge test prescribed by the director;
  - b. Has successfully passed a vision examination; and

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<sup>101</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1103, chapter 271, and section 1 of Senate Bill No. 2287, chapter 266.

- c. Has the written approval of the individual's parent or legal guardian.
3. The permittee must be accompanied by a licensed operator who holds a license corresponding to the vehicle the permittee operates, who is at least eighteen years of age, who has had at least three years of driving experience, and who is occupying a seat beside the driver. An individual other than the supervising driver and the permitholder may not be in the front seat unless the vehicle has only a front seat, in which case, the supervising driver must be seated next to the permitholder. ~~Persons holding an instruction permit for the operation of a motorcycle shall operate the motorcycle only during hours when the use of headlights is not required pursuant to section 39-21-01, and may not carry or transport any passenger. Any instruction permit may be renewed or a new permit issued for an additional period.~~
  4. An individual who is not yet eighteen years of age is not eligible for a license until that ~~person~~ individual has had an instruction permit issued for at least six months or at least twelve months if under the age of sixteen. The director may recognize an instruction permit issued by another jurisdiction in computing the six-month or twelve-month instructional period.
  5. The permittee may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.
  6. A resident of this state who is at least fourteen years of age may apply to the director for a class M learner's permit under section 39-06-14. An individual holding a class M learner's permit for the operation of a motorcycle may not operate the motorcycle during the hours when the use of headlights are required under section 39-21-01 or carry or transport any passenger. Any learner's permit may be renewed or a new permit issued for an additional period.
  7. The director may issue a commercial driver's instruction permit under section 39-06.2-07.

<sup>102</sup> **SECTION 4. AMENDMENT.** Section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-17. Restricted licenses - Penalty for violation.**

1. The director, upon issuing an operator's license or a temporary restricted operator's license pursuant to section 39-06.1-11, has authority to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the director may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.
2. The director may either issue a special restricted license or may ~~set forth~~ suchstate the restrictions upon the usual license form. ~~TheIn the same~~

<sup>102</sup> Section 39-06-17 was also amended by section 1 of Senate Bill No. 2346, chapter 276.

~~manner, the~~ director shall ~~likewise~~ restrict licenses ~~pursuant to the requirements of~~ under section 39-16.1-09.

3. A restricted operator's license or permit to operate the parent's or guardian's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A child may operate an automobile that is not the parent's or guardian's to take the road test. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
  - a. The child is at least fourteen years of age.
  - b. The child is qualified to operate an automobile safely.
  - c. It is necessary for the child to drive the parent's or guardian's automobile without being accompanied by an adult.
  - d. The child has:
    - (1) ~~Completed~~Successfully completed an approved driver's education course that includes a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
    - (2) Successfully completed a course at an approved commercial driver training school.
  - e. The child has accumulated a minimum of fifty hours of supervised, behind-the-wheel driving experience in various driving conditions and situations that include night driving; driving on gravel, dirt, or aggregate surface road; driving in both rural and urban conditions; and winter driving conditions.

The parent or guardian at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

4. ~~The director may upon~~Upon receiving satisfactory evidence of any violation of the restrictions of ~~such a~~ license, ~~the director may~~ suspend or revoke the ~~same~~ license but the licensee is entitled to a hearing as upon a suspension or revocation under this chapter.
5. It is a class B misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to that person other than restrictions imposed under subsection 6. If the restricted license was issued under section 39-06.1-11 and the underlying suspension was imposed for a violation of section 39-08-01 or equivalent ordinance, or is governed by chapter 39-20, punishment is as provided in

subsection 2 of section 39-06-42 and upon receiving notice of the conviction the director shall revoke, without opportunity for hearing, the licensee's restricted license and shall extend the underlying suspension for a like period of not more than one year. The director may not issue a restricted license for the extended period of suspension imposed under this subsection. If the conviction referred to in this section is reversed by an appellate court, the director shall restore the person to the status held by the person prior to the conviction, including restoration of driving privileges if appropriate.

6. A restricted license issued under subsection 3 to a child at least fourteen years of age to operate a parent's or guardian's automobile authorizes the licenseholder to drive the type or class of motor vehicle specified on the restricted license only under the following conditions:
  - a. A restricted licenseholder must be in possession of the license while operating the motor vehicle.
  - b. An individual holding a restricted driver's license driving a motor vehicle may not carry more passengers than the vehicle manufacturer's suggested passenger capacity.
  - c. An individual holding a restricted driver's license driving a motor vehicle may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.
  - d. An individual holding a restricted driver's license may not operate a motor vehicle between the later of sunset or nine p.m. and five a.m. unless a parent, legal guardian, or an individual eighteen years of age or older is in the front seat of the motor vehicle or the motor vehicle is being driven directly to or from work, an official school activity, or a religious activity.

**103 SECTION 5. 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, section 7 of this Act, 39-09-04.1, 39-09-09, subsection 1 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 chapter 39-10, 39-10.2, or 39-21, or equivalent ordinances, except subsection 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, subsections 2 and 3 of section 39-21-46, and those sections within those chapters which are specifically listed in subsection 1 of section 39-06.1-08.

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<sup>103</sup> Section 39-06.1-09 was also amended by section 2 of House Bill No. 1195, chapter 279.

<sup>104</sup> **SECTION 6.** 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:

Driving in violation of the conditions of an instruction permit 2 points

**SECTION 7.** A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

**Use of an electronic communication device by minor prohibited.**

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

**SECTION 8. APPLICATION.** This Act applies to permits and licenses issued after January 1, 2012, and does not effect a valid permit or license issued before the effective date of this Act.

Approved April 26, 2011  
Filed April 26, 2011

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<sup>104</sup> Section 39-06.1-10 was also amended by section 13 of House Bill No. 1103, chapter 271.

## CHAPTER 273

### SENATE BILL NO. 2143

(Senators J. Lee, Uglem, Warner)  
(Representatives Delmore, Kreidt, Trottier)

AN ACT to amend and reenact section 39-06-07.2 of the North Dakota Century Code, relating to use of medical advice by the director of the department of transportation.

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

<sup>105</sup> **SECTION 1. AMENDMENT.** Section 39-06-07.2 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-06-07.2. Medical advice - Use by director - Definition.**

1. The director is authorized to seek professional medical advice from ~~any physician or optometrist authorized to practice in this state~~ a licensed medical care provider and to use that advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses ~~pursuant to~~ under this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.
2. In addition to advice sought and received ~~pursuant to~~ under subsection 1, the director may consider information and advice received from an individual applicant's or driver's ~~personal physician or optometrist~~ licensed medical care provider. Any examination and report requested by the applicant or driver or required to be taken and provided by the director ~~pursuant to~~ under this chapter must be at the expense of the applicant or driver.
3. Any ~~physician or optometrist~~ licensed medical care provider providing advice to the director or director's authorized agent ~~pursuant to~~ under subsection 1 ~~shall incur no~~ does not incur any liability for any opinion, recommendation, or advice provided.
4. Advice and information received by the director or director's authorized agent ~~pursuant to~~ under subsection 1 which relates to an individual applicant or driver is for the confidential use of the director or director's authorized agent in making decisions on the individual's qualifications as a driver, and the information may not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.
5. General advice and information received by the director or director's authorized agent ~~pursuant to~~ under this section, in addition to other sources of information, may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.

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<sup>105</sup> Section 39-06-07.2 was also amended by section 7 of House Bill No. 1103, chapter 271.

6. As used in this section, "licensed medical care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant, who is licensed, certified, or registered in accordance with laws and regulations in this or another state.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 274

### HOUSE BILL NO. 1109

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-06-14 and subsection 1 of section 39-06-19 of the North Dakota Century Code, relating to driver's license renewal dates and fees.

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

<sup>106</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~~<sup>fifteen</sup> 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. 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 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors. No license is valid until it has been signed by the licensee with the licensee's usual signature. 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.

**SECTION 2. AMENDMENT.** Subsection 1 of section 39-06-19 of the North Dakota Century Code is amended and reenacted as follows:

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<sup>106</sup> Section 39-06-14 was also amended by section 8 of House Bill No. 1103, chapter 271, and section 1 of Senate Bill No. 2244, chapter 275.

1. Every operator's license issued under this chapter expires and is renewed according to this section. The expiration date of ~~an~~ a noncommercial operator's license for a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the ~~second~~third subsequent year ending in an odd numeral, except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of ~~an~~ a noncommercial operator's license for a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the ~~second~~third subsequent year ending in an even numeral except for an individual who, at the time of renewal, is seventy-eight years of age or older is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. The expiration date of a commercial operator's license for a person whose birth occurred in a year ending in an odd numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an odd numeral. The expiration date of a commercial operator's license for a person whose birth occurred in a year ending in an even numeral is twelve midnight on the anniversary of the birthday in the second subsequent year ending in an even numeral. A person who has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States, a pending application for asylum in the United States, a pending or approved application for temporary protected status in the United States, approved deferred action status, or a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent residence status in the United States will be issued a temporary operator's license or nondriver photo identification card. The temporary operator's license or identification card is valid only during the period of time of the applicant's authorized stay in the United States or, if there is no definite end to the period of authorized stay, a period of one year. The license or card may be renewed only upon presentation of valid documentary evidence that the status has been extended.

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 275

### SENATE BILL NO. 2244

(Senators G. Lee, Nodland)  
(Representatives Gruchalla, Owens, Weisz)

AN ACT to amend and reenact subdivisions a and b of subsection 3 of section 39-06-14 and section 39-32-02 of the North Dakota Century Code, relating to operator's licenses and intrastate exemptions for drivers of commercial motor vehicles.

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

<sup>107</sup> **SECTION 1. AMENDMENT.** Subdivisions a and b of subsection 3 of section 39-06-14 of the North Dakota Century Code are amended and reenacted as follows:

- a. A driver with a class D 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 may operate 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] in excess of ten thousand pounds [4535.92 kilograms] provided the combined weight does not exceed twenty-six thousand pounds [1193.40 kilograms] gross combination weight rating.~~ 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. A driver with a class D license must be eighteen years of age or older to operate a combination of vehicles with a gross combination weight or a gross combination weight rating in excess of twenty-six thousand pounds [11793.40 kilograms], unless the driver is driving a farm vehicle and meets the requirements of subdivision b of subsection 3 of section 39-06-14 and subsection 3 of section 39-06.2-06.
- b. A driver with a class D license may operate any two-axle or tandem-axle motor vehicle, a triple-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 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 or a bus designed to carry sixteen or more passengers, including the driver.

**SECTION 2. AMENDMENT.** Section 39-32-02 of the North Dakota Century Code is amended and reenacted as follows:

<sup>107</sup> Section 39-06-14 was also amended by section 8 of House Bill No. 1103, chapter 271, and section 1 of House Bill No. 1109, chapter 274.

**39-32-02. Intrastate exemptions from federal hours of service provisionsregulations.**

1. The following intrastate drivers are not subject to hours of service limitationsregulations:
  - a. A driver of an authorized emergency vehicle;
  - b. A driver who operates a motor vehicle ~~that has a manufacturer's~~ intrastate commerce if the gross vehicle weight, gross vehicle weight rating, gross combination weight, and gross combination weight rating equal to or are less than twenty-six thousand one pounds [41793.4011797.18 kilograms] and that is not transporting unless the vehicle is used to transport hazardous materials- requiring a placard or unless the vehicle is designed or used to transport sixteen or more people, including the driver; or
  - c. A driver of a tow truck operating at the request of a law enforcement officer.
2. Except for a driver included in subsection 1, a motor carrier may not permit or require any intrastate driver to drive and an intrastate driver may not drive:
  - a. More than twelve cumulative hours following ~~eighteen~~ eighteen consecutive hours off duty;
  - b. For any period after ~~having been the end of the sixteenth hour after coming on duty more than fifteen hours following ten consecutive hours off duty; or~~
  - c. After having been on duty for seventy hours in any period of seven consecutive days.
3. Hours of service limitations do not apply to an intrastate driver ~~when transporting property or passengers operating a commercial vehicle to provide emergency relief during a declared an emergency declared by the governor. The employer must declare and document that the emergency is necessary to assure the protection of public health and safety or to provide other essential assistance to the public. An employer shall maintain documentation for one year and shall make it available upon request of a law enforcement officer. Under this subsection, an emergency is the result of any natural activities, including a tornado, windstorm, thunderstorm, snowstorm, ice storm, blizzard, drought, mudslide, flood, high water, earthquake, forest fire, explosion, blackout, or other occurrence, natural or manmade, which interrupts delivery of essential services, such as electricity, medical care, sewer, water, telecommunications transmissions, or essential supplies, such as food and fuels, or otherwise threatens human life or public welfare.~~
4. An intrastate driver is exempt from maintaining a record of duty status if:
  - a. The driver operates within a one hundred fifty air-mile radius from the driver's normal work-reporting location or from the official worksite of the vehicle;
  - b. At least ~~eighteen~~ eighteen consecutive hours off duty separate each twelve hours on duty;

- c. The driver, except for a driver salesperson, returns to the work-reporting location and is released from work within twelve consecutive hours; and
- d. The motor carrier maintains and retains for a period of six months accurate time records showing the time the driver reports for duty and is released from duty each day.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 276

### SENATE BILL NO. 2346

(Senators Olafson, Taylor, Dotzenrod)  
(Representatives Boe, Monson)

AN ACT to amend and reenact subsection 3 of section 39-06-17 of the North Dakota Century Code, relating to restricted licenses for minors.

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

<sup>108</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 39-06-17 of the North Dakota Century Code is amended and reenacted as follows:

3. A restricted operator's license or permit to operate the parent's or guardian's, grandparent's, sibling's, aunt's, or uncle's automobile, or an automobile which is equipped with dual controls and while accompanied by a qualified instructor, may be issued to any child, who is at least fourteen years of age, and otherwise qualified, upon the written recommendation of the parent or guardian. A child may operate an automobile that is not the parent's or guardian's to take the road test. No operator's license may be issued until the child, accompanied by the parent or guardian, appears in person and satisfies the director that:
  - a. The child is at least fourteen years of age.
  - b. The child is qualified to operate an automobile safely.
  - c. It is necessary for the child to drive the parent's or guardian's, grandparent's, sibling's, aunt's, or uncle's automobile without being accompanied by an adult.
  - d. The child has:
    - (1) Completed a course of classroom instruction and a course of behind-the-wheel instruction acceptable to the director; or
    - (2) Successfully completed a course at an approved commercial driver training school.

The parent or guardian, grandparent, sibling, aunt, or uncle at all times is responsible for any and all damages growing out of the negligent operation of a motor vehicle by any such child. The provisions of this subsection do not authorize the child to drive a commercial truck, motorbus, or taxicab except the holder of a class D license, fourteen or fifteen years of age, may drive a farm motor vehicle having a gross weight of fifty thousand pounds [22679.62 kilograms] when used to transport agricultural products, farm machinery, or farm supplies to or from a farm when so operated within one hundred fifty miles [241.40 kilometers] of the driver's farm.

Approved April 26, 2011  
Filed April 26, 2011

<sup>108</sup> Section 39-06-17 was also amended by section 4 of House Bill No. 1256, chapter 272.

## CHAPTER 277

### HOUSE BILL NO. 1197

(Representatives L. Meier, R. Kelsch, Rohr, Steiner)  
(Senators Dever, Sitte)

AN ACT to create and enact a new section to chapter 39-06 of the North Dakota Century Code, relating to a veteran indicator on an operator's license.

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

**SECTION 1.** A new section to chapter 39-06 of the North Dakota Century Code is created and enacted as follows:

#### **Veteran indicator on license.**

Upon request and with adequate documentation, the director shall place an indicator on the face of an operator's license of a veteran. The veteran may make the request through the department of veterans' affairs.

Approved April 11, 2011  
Filed April 11, 2011

## CHAPTER 278

### SENATE BILL NO. 2112

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact three new subsections to section 39-06.2-02 and section 39-06.2-08.1 of the North Dakota Century Code, relating to commercial driver's licenses; and to amend and reenact subsection 25 of section 39-06.2-02, subdivision b of subsection 4 of section 39-06.2-07, and subsections 1 and 5 of section 39-06.2-08 of the North Dakota Century Code, relating to commercial driver's licenses.

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

**SECTION 1.** Three new subsections to section 39-06.2-02 of the North Dakota Century Code are created and enacted as follows:

"Downgrade" means:

- a. A state allows the driver to change the driver's self-certification to interstate, but operating exclusively in transportation or operation excepted from 49 CFR part 391, as provided in 390.3(f), 391.2, 391.68, or 398.3;
- b. A state allows the driver to change the driver's self-certification to intrastate only, if the driver qualifies under the state's physical qualification requirements for intrastate only;
- c. A state allows the driver to change the driver's certification to intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification; or
- d. A state removes the commercial driver's license privilege from the driver's license.

"Electronic device" includes a cellular telephone, personal digital assistant, pager, computer, or any other device used to input, write, send, receive, or read text.

"Texting" means manually entering alphanumeric text into, or reading text from, an electronic device. This action includes short message service, e-mailing, instant messaging, a command or request to access a worldwide web page, or engaging in any other form of electronic text retrieval or entry, for present or future communication. "Texting" does not include:

- a. Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone call using voice commands to initiate or receive a telephone call;
- b. Inputting, selecting, or reading information on a global positioning system or navigation system; or

- c. Using a device capable of performing multiple functions, including fleet management systems, dispatching devices, smartphones, citizens' band radios, or music players, for a purpose that is not otherwise prohibited in 49 CFR part 383.

**SECTION 2. AMENDMENT.** Subsection 25 of section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

25. "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;
  - 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; or
  - g. Violating a state or local law or ordinance prohibiting texting while driving.

**SECTION 3.** Section 39-06.2-08.1 of the North Dakota Century Code is created and enacted as follows:

**39-06.2-08.1. Commercial driver's license medical certification requirements.**

1. The director may issue a commercial driver's instruction permit or commercial driver's license to a North Dakota resident who meets the medical qualification and certification requirements pursuant to the limitations of 49 CFR parts 383 and 391.
2. Every individual who makes application for a commercial driver's instruction permit or commercial driver's license must certify that the individual meets the qualification requirements contained in 49 CFR part 391 or certify that the individual's commercial transportation is entirely in intrastate commerce and is not subject to 49 CFR part 391.

3. The application will contain the following categories to comply with the commercial driver certification requirements:
  - a. Interstate and subject to 49 CFR part 391.
  - b. Interstate, but operating exclusively in transportation or operations excepted under 49 CFR part 390.3(f), 391.2, 391.68, or 398.3.
  - c. Intrastate and subject to state driver's qualification requirements.
  - d. Intrastate, but operating exclusively in transportation or operations excepted from all or part of the state driver's qualification requirements.
4. Every individual who makes application for or holds a commercial driver's instruction permit or commercial driver's license must submit a copy of the individual's medical certificate to the director unless the commercial transportation is not subject to 49 CFR part 391.
5. The director will downgrade or remove the commercial driving privilege from the license if the medical certificate expires and the driver does not change the driver's certification if the driver is no longer subject to 49 CFR part 391.
6. If the driver provides a current medical certification, the director shall upgrade without retesting the license of a driver which was downgraded under this section.

**SECTION 4. AMENDMENT.** Subdivision b of subsection 4 of section 39-06.2-07 of the North Dakota Century Code is amended and reenacted as follows:

- b. The commercial driver's instruction permit may not be issued for a period to exceed six months. Only one renewal or reissuance may be granted within a two-year period. The director may issue a letter of authority that authorizes the applicant to drive to a driver's license office, complete the road test, and return home. The letter of authority is used after an allowable number of permits have been issued. The holder of a commercial driver's instruction permit may, unless otherwise disqualified, drive a commercial motor vehicle only when accompanied by the holder of a commercial driver's license valid for the type of vehicle driven who occupies a seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

**SECTION 5. AMENDMENT.** Subsections 1 and 5 of section 39-06.2-08 of the North Dakota Century Code are amended and reenacted as follows:

1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:
  - a. The full name and current mailing address of the applicant;
  - b. A physical description of the applicant, including sex, height, weight, and eye and hair color;
  - c. Date of birth;

- d. The applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;
  - e. The applicant's signature;
  - f. The certifications including those required by 49 CFR part ~~383.71(a)~~383.71;
  - g. Any other information required by the director; and
  - h. A consent to release driving record information.
5. Any individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, ~~or cancellation~~, or disqualification of the individual's commercial driver's license or pending application for a period of at least sixty consecutive days.

Approved April 20, 2011  
Filed April 20, 2011

## CHAPTER 279

### HOUSE BILL NO. 1195

(Representatives Klemin, Drovdal, Vigesaa)  
(Senators Hogue, Lyson, Nething)

AN ACT to create and enact a new section to chapter 39-08 of the North Dakota Century Code, relating to the use of a wireless communications device; to amend and reenact subsection 2 of section 39-06.1-06 and section 39-06.1-09 of the North Dakota Century Code, relating to fees for a moving violation; and to provide a penalty.

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

<sup>109</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, a fee of twenty-five dollars.
  - d. A violation of subsection 1 of section 39-12-02 or section 3 of this Act, a fee of one hundred dollars.
  - e. A violation of subdivision d of subsection 1 of section 39-12-04, a fee of one hundred dollars.

<sup>110</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, section 3 of this Act, 39-09-04.1, or 39-09-09, subsection 1 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 chapter 39-10, 39-10.2, or

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<sup>109</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of Senate Bill No. 2157, chapter 280, and section 3 of Senate Bill No. 2207, chapter 268.

<sup>110</sup> Section 39-06.1-09 was also amended by section 5 of House Bill No. 1256, chapter 272.

39-21, or equivalent ordinances, except subsection 5 of section 39-10-26, sections 39-21-44 and 39-21-45.1, subsections 2 and 3 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.** A new section to chapter 39-08 of the North Dakota Century Code is created and enacted as follows:

**Use of a wireless communications device prohibited.**

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
  - a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes e-mail, a text message, an instant message, a command or request to access a world wide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
    - (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
    - (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
    - (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, smart phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
    - (4) Voice or other data transmitted as a result of making a telephone or cellular phone call; or
    - (5) Data transmitted automatically by a wireless communication device without direct initiation by an individual.
  - b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.
3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

## CHAPTER 280

### SENATE BILL NO. 2157

(Senators Heckaman, Andrist, Nodland)  
(Representatives Devlin, Guggisberg, Klein)

AN ACT to create and enact a new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code, relating to the fee for entering a road closed due to hazardous conditions; to amend and reenact section 39-10-21.1 of the North Dakota Century Code, relating to entering a closed road; and to provide a penalty.

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

<sup>111</sup> **SECTION 1.** A new subdivision to subsection 2 of section 39-06.1-06 of the North Dakota Century Code is created and enacted as follows:

A violation of subsection 2 of section 39-10-21.1, a fee of two hundred fifty dollars.

**SECTION 2. AMENDMENT.** Section 39-10-21.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-10-21.1. Closing road because of hazardous conditions - Posting of official traffic-control devices - Entering closed road prohibited.**

1. The highway patrol or local law enforcement authorities having jurisdiction over a road may close a road temporarily due to hazardous conditions for the protection and safety of the public. If such a closing is made, the authority ordering the closing shall make every reasonable attempt to notify the public and, when practical, may post appropriate official traffic-control devices to advise motorists of the closing. ~~No person~~
2. An individual, while operating a motor vehicle, may not knowingly enter a road closed ~~under this section~~ which is posted with an appropriate traffic-control device at the point of entry.

Approved May 17, 2011  
Filed May 17, 2011

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<sup>111</sup> Section 39-06.1-06 was also amended by section 3 of House Bill No. 1188, chapter 192, section 1 of House Bill No. 1195, chapter 279, and section 3 of Senate Bill No. 2207, chapter 268.

## CHAPTER 281

### HOUSE BILL NO. 1262

(Representatives Mock, DeKrey, Kretschmar, S. Kelsh)  
(Senators Lyson, Nelson)

AN ACT to amend and reenact sections 12.1-08-11, 39-10-71, and 39-24.1-13 of the North Dakota Century Code, relating to fleeing a law enforcement officer.

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

**SECTION 1. AMENDMENT.** Section 12.1-08-11 of the North Dakota Century Code is amended and reenacted as follows:

##### **12.1-08-11. Refusing to halt.**

Any person, other than the driver of a motor vehicle under section 39-10-71, who willfully fails or refuses to stop or who otherwise flees or attempts to elude, in any manner, a pursuing peace officer, when given a visual or audible signal to stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal to stop complies with this section if the signal is perceptible to the person and:

1. If given from a vehicle, the signal is given by hand, voice, emergency light, or siren, and the vehicle is appropriately marked showing it to be an official law enforcement vehicle; or
2. 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.

**SECTION 2. 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:
  - 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

- 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.

**SECTION 3. AMENDMENT.** Section 39-24.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-13. Fleeing or attempting to elude a peace officer.**

1. Any driver of a snowmobile who willfully fails or refuses to bring the snowmobile 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 snowmobile to a stop, is guilty of a class B misdemeanor for a first or second offense and a class A misdemeanor for a subsequent offense. A signal complies with this section if the signal is perceptible to the driver and:
  - 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
  - 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.
2. Any sentence imposed under this section must include a minimum fine of at least five hundred dollars.

Approved March 14, 2011  
Filed March 14, 2011

## CHAPTER 282

### SENATE BILL NO. 2044

(Legislative Management)  
(Public Safety and Transportation Committee)

AN ACT to amend and reenact subsection 3 of section 39-12-02 and section 39-12-08 of the North Dakota Century Code, relating to fees for issuing overweight permits and fees for overweight permit violations for counties; to provide for a legislative management study; and to declare an emergency.

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

<sup>112</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 39-12-02 of the North Dakota Century Code is amended and reenacted as follows:

3. 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. ~~Except for publicly owned vehicles that provide service beyond the agency's jurisdiction, official, publicly owned, emergency, or military vehicles are not subject to charges for permits. The minimum fee for selected charges is as follows:~~ Permit fees generated by a political subdivision must be deposited in the local authority's general fund for support of the local road system.
  - 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 or three hundred dollars per calendar year for unlimited trips.
  - 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.
  - g. The fee for a bridge length permit is thirty dollars per trip or one hundred fifty dollars per calendar year.
  - h. The fee for a longer combination vehicle permit is one hundred dollars per month for fees paid on a monthly basis.

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<sup>112</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 1 of Senate Bill No. 2308, chapter 284, and section 2 of Senate Bill No. 2308, chapter 284.

- i. The fee for an overwidth vehicle or load that is fourteen feet six inches [4.42 meters] or less is twenty dollars per trip or one hundred dollars per calendar year unless the vehicle is a noncommercial fish house trailer being moved by the owner, then the fee is twenty dollars per calendar year.

**SECTION 2. 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.**

A person operating a motor vehicle or the owner of the motor vehicle being operated without a permit as specified in this chapter must be assessed a fee of one hundred dollars. Any person violating any other provision of this chapter, for which a specific penalty is not provided, must be assessed a fee of twenty dollars. Violating the conditions of any permit type automatically voids the permit. For a permit allowed under this chapter, if the violation is of a permit issued by a county under a home rule ordinance or any city, including a home rule city, the statutory fee is for a violation of state law in an amount provided by this section.

**SECTION 3. LEGISLATIVE MANAGEMENT STUDY - MOTOR VEHICLE PERMIT FEES.** During the 2011-12 interim, the legislative management shall consider studying motor vehicle permit fees, including overweight and overwidth permit fees charged by cities and counties. The legislative management shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the sixty-third legislative assembly.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 25, 2011  
Filed April 25, 2011

## CHAPTER 283

### HOUSE BILL NO. 1254

(Representative Weisz)  
(Senators Klein, G. Lee, Luick)

AN ACT to create and enact a new subsection to section 39-12-02 of the North Dakota Century Code, relating to permits for vehicles of excessive size or weight.

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

<sup>113</sup> **SECTION 1.** A new subsection to section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

Permits issued for overdimensional movements of vehicles that do not exceed ten feet [3.05 meters] in total width, including load, are valid for travel during the day and night.

Approved April 25, 2011  
Filed April 25, 2011

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<sup>113</sup> Section 39-12-02 was also amended by section 1 of Senate Bill No. 2308, chapter 284, section 2 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

## CHAPTER 284

### SENATE BILL NO. 2308

(Senators Stenehjem, G. Lee)  
(Representatives Carlson, Ruby)

AN ACT to create and enact a new subdivision to subsection 3 of section 39-12-02, a new subsection to section 39-12-02, and a new section to chapter 39-12 of the North Dakota Century Code, relating to special permits for oversize and overweight vehicles, a motor carrier electronic permit transaction fund, and a line of credit; to provide for a continuing appropriation; and to declare an emergency.

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

114 **SECTION 1.** A new subdivision to subsection 3 of section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

The highway patrol may establish an online electronic permit system. If the highway patrol establishes an online electronic permit system, the highway patrol shall assess an additional fifteen dollar fee for every permit issued under this section to be deposited into the motor carrier electronic permit transaction fund.

115 **SECTION 2.** A new subsection to section 39-12-02 of the North Dakota Century Code is created and enacted as follows:

There is created in the state treasury a fund known as the motor carrier electronic permit transaction fund. All money in the fund is appropriated on a continuing basis to the highway patrol to defray the costs of establishing and maintaining an online electronic permit system for permitting and routing oversize and overweight vehicles in this state. The highway patrol may contract with a private entity to establish, operate, and maintain an online electronic permit system. The online electronic permit system includes the issuance of permits under this section and an automated routing system. The automated routing system must include integration of department of transportation traveler information system information, all other data required for the automated routing system, and integration of the highway patrol computer-aided dispatch system.

**SECTION 3.** A new section to chapter 39-12 of the North Dakota Century Code is created and enacted as follows:

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<sup>114</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 2 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

<sup>115</sup> Section 39-12-02 was also amended by section 1 of House Bill No. 1254, chapter 283, section 1 of Senate Bill No. 2308, chapter 284, and section 1 of Senate Bill No. 2044, chapter 282.

**Bank of North Dakota - Line of credit.**

The Bank of North Dakota shall extend a line of credit not to exceed two million five hundred sixty thousand dollars to the highway patrol until June 30, 2015, to establish an online electronic permit system. The highway patrol may access this line of credit and shall repay the line of credit with funds in the motor carrier electronic permit transaction fund.

**SECTION 4. PROJECT PLANNING AND IMPLEMENTATION.** The highway patrol shall involve the information technology department in the study and planning of the motor carrier electronic permit project, for the biennium beginning July 1, 2011, and ending June 30, 2013. The highway patrol shall include representatives of the information technology department on the project team responsible for the study and planning of the project and receive approval from the information technology department prior to proceeding with any study recommendations relating to the project.

**SECTION 5. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 285

### HOUSE BILL NO. 1079

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to amend and reenact subsection 1 of section 39-12-05 of the North Dakota Century Code, relating to steering axle weight limits on the national system of interstate and defense highways.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-12-05 of the North Dakota Century Code 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 except that such limits may not be applied to tires on the steering axle. Steering axle weights are limited to twenty thousand pounds [9071.85 kilograms] or the axle rating established by the manufacturer, whichever is lower. Axles spaced forty inches [101.60 centimeters] apart or less are considered as one axle and, 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. 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.

Approved March 28, 2011

Filed March 28, 2011

## CHAPTER 286

### SENATE BILL NO. 2102

(Transportation Committee)  
(At the request of the State Treasurer)

AN ACT to amend and reenact section 39-12-14.1 of the North Dakota Century Code, relating to extraordinary road use fees.

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

**SECTION 1. AMENDMENT.** Section 39-12-14.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-12-14.1. Voluntary settlement of extraordinary road use fee charges.**

Before the complaint is issued pursuant to section 39-12-14, the owner, or the owner's driver or agent, may voluntarily pay the amount of the extraordinary road use fee, or may provide proof of surety coverage to ensure payment of the extraordinary road use fee, provided under section 39-12-17, plus any towing or storage costs. Any settlement, whether made by the owner, or the owner's driver or agent, must be presumed to be of a voluntary nature. A peace officer or a peace officer's designee is authorized to receive the settlement payment on behalf of the authority having jurisdiction of the road whereon the violation occurred. The extraordinary road use fees must be ~~remitted to~~ deposited with the state treasurer to be credited to the highway fund.

Approved April 25, 2011

Filed April 25, 2011

## CHAPTER 287

### HOUSE BILL NO. 1082

(Transportation Committee)

(At the request of the Department of Transportation)

AN ACT to create and enact section 39-12-24 of the North Dakota Century Code, relating to cooperative regional permit agreements on excess size or weight vehicles.

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

**SECTION 1.** Section 39-12-24 of the North Dakota Century Code is created and enacted as follows:

**39-12-24. Authority for cooperative regional permit agreements on excess size or weight vehicles.**

1. The superintendent and the director, or the director's designee, may enter cooperative regional permit agreements with any state that has enacted a law authorizing the agreement for the regional operation or movement of nondivisible oversize or overweight vehicles and to facilitate the uniform application, administration, and enforcement of laws concerning nondivisible oversize or overweight vehicles.
2. The agreement may include the establishment of a regional permit system for the operation or movement of nondivisible oversize or overweight vehicles from one state in the region to or through other states in the region under a single-trip permit in accordance with the requirements of any state that is a party to the agreement.
3. The North Dakota highway patrol and the department may enter the agreement with any state that has enacted a law authorizing the agreement to:
  - a. Authorize any state to issue regional permits for nondivisible oversize or overweight vehicles to operate on North Dakota state highways. A regional permit issued by any state must conform to North Dakota permit requirements in chapter 39-12, the rules and regulations implementing chapter 39-12, and as required in the agreement;
  - b. Issue regional permits for nondivisible oversize or overweight vehicles to operate on highways of any state that has enacted laws authorizing the agreement in accordance with the laws of the state and as required in the agreement; and
  - c. Agree to the administration of the agreement by any state that is party to the agreement.
4. The North Dakota highway patrol may enforce the terms of any regional permit concerning the operation of the permitted vehicle on North Dakota state highways according to North Dakota law.

5. The agreement must provide that employees and officials of any state that is party to the agreement who administer or enforce the agreement, or who otherwise act under the terms of the agreement, may not be eligible for compensation, employee rights, or benefits from North Dakota and may not be considered employees or officials of North Dakota.
6. The agreement may provide for uniform procedures and standards for nondivisible oversize and overweight vehicles and regional permits, including enforcement procedures, safety inspection standards, operational standards, permit and application form procedures, and driver qualifications.
7. The North Dakota highway patrol shall deposit all fees it may collect for regional permits on behalf of any state included in the agreement into a fund established as the regional permit fund. All moneys collected by the North Dakota highway patrol as fees for the issue of a regional permit and deposited into the regional permit fund are appropriated on a continuing basis for the purpose of paying each state included in the agreement for each state's respective share of the total fees collected for the regional permit. The North Dakota highway patrol shall deposit all moneys collected on behalf of North Dakota for regional permits issued under this section into the state highway fund in accordance with section 39-12-02.
8. Notwithstanding any provision of this section to the contrary, all North Dakota statutes and rules and regulations prescribing size or weight vehicle requirements, or relating to permits for oversize or overweight vehicles, remain in full force and effect until amended or repealed by law, and the agreement entered under this section must comply with North Dakota statutes and rules and regulations.

Approved March 28, 2011  
Filed March 28, 2011

## CHAPTER 288

### SENATE BILL NO. 2113

(Judiciary Committee)  
(At the request of the Attorney General)

AN ACT to amend and reenact sections 20.1-13.1-01 and 20.1-13.1-03, subsections 2 and 3 of section 20.1-13.1-05, subsections 2 and 4 of section 20.1-13.1-08, sections 20.1-13.1-10, 20.1-15-01, and 20.1-15-03, subsections 2 and 3 of section 20.1-15-05, subsections 2 and 4 of section 20.1-15-08, sections 20.1-15-11 and 20.1-15-15, subsection 4 of section 39-06.2-10.6, sections 39-20-01 and 39-20-02, subsections 2, 3, and 4 of section 39-20-03.1, subsections 2 and 3 of section 39-20-03.2, subsections 2 and 4 of section 39-20-05, and sections 39-20-07, 39-20-14, 39-24.1-01, 39-24.1-03, and 39-24.1-08 of the North Dakota Century Code, relating to chemical tests and the state crime laboratory.

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

**SECTION 1. AMENDMENT.** Section 20.1-13.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-01. Implied consent to determine ~~alcoholic~~ alcohol concentration and drug ~~content~~ presence of blood drugs.**

Any ~~person~~ individual who operates a motorboat or vessel in this state is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the ~~alcoholic, other drug~~ alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, or urine. As used in this chapter, "operates" means to be in motion, en route, but not at anchor or aground; "vessel" means any watercraft used or designed to be used for navigation on the water such as a boat operated by machinery, either permanently or temporarily affixed, a sailboat other than a sailboard, an inflatable manually propelled boat, a canoe, kayak, or rowboat, but does not include an inner tube, air mattress, or other water toy; "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~ individual incapable of safely operating a motorboat or vessel; and "chemical test" means any test or tests to determine the ~~alcoholic, or other drug~~ alcohol concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the ~~person~~ individual, except ~~persons~~ individuals mentioned in section 20.1-13.1-04, under arrest and informing that ~~person~~ individual that the ~~person~~ individual is or will be charged with the offense of operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the ~~person~~ individual charged that refusal of the ~~person~~ individual to submit to the chemical test determined appropriate will result in that ~~person~~ individual being prohibited from operating a motorboat or vessel for up to

three years. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-13-07, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 2. AMENDMENT.** Section 20.1-13.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, or urine, ~~or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 3. AMENDMENT.** Subsections 2 and 3 of section 20.1-13.1-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If a chemical test administered under section 20.1-13.1-01 or 20.1-13.1-04 was by ~~saliva or urine~~ sample or by drawing blood as provided in section 20.1-13.1-03 and the ~~person~~individual tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the ~~saliva~~, urine, or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the ~~person~~individual resides. On that

notification, that game warden or law enforcement agency shall immediately issue a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel. The issuance of a statement of intent to prohibit the ~~person~~individual from operating a motorboat or vessel serves as the director's official notification to the ~~person~~individual of the director's intent to prohibit the ~~person~~individual from operating a motorboat or vessel in this state.

3. The game warden or law enforcement officer, within five days of issuing the statement of intent, shall forward to the director a certified written report in the form required by the director. If the statement was given because of the results of a chemical test, the report must show that the game warden or officer had probable cause to believe the ~~person~~individual had been operating a motorboat or vessel while in violation of section 20.1-13-07, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or 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 game warden or officer.

**SECTION 4. AMENDMENT.** Subsections 2 and 4 of section 20.1-13.1-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns the prohibition from operating a motorboat or vessel for operating a motorboat or vessel while having an alcohol, other drug, or a combination thereof concentration of at least ten 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 warden or officer had probable cause to believe the ~~person~~individual had been operating a motorboat or vessel in violation of section 20.1-13-07; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual was tested in accordance with section 20.1-13.1-01 or 20.1-13.1-04 and, if applicable, section 20.1-13.1-03; and whether the chemical test results show the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten 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, or urine, ~~or saliva~~ sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the ~~person~~individual was informed that that ~~person~~individual may be prohibited from operating a motorboat or vessel based on the results of the chemical test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~

- a. ~~Any~~ Any copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, ~~or~~ a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
- b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol, ~~other drug concentration or the presence of other drugs,~~ or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate~~ that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.

**SECTION 5. AMENDMENT.** Section 20.1-13.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-13.1-10. Interpretation of chemical tests.**

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while operating a motorboat or vessel while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, ~~concentration or presence of other drugs,~~ or a combination thereof, in the ~~person's individual's~~ blood, breath, or urine 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~~An individual having an alcohol, other drug, or a combination thereof 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 operating a motorboat or vessel is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a motorboat or vessel.
2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cube centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cube centimeters~~milliliters of urine.
3. The results of the chemical test 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 director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
4. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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 director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. The ~~material filed~~certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  6. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the defendant's blood, breath, ~~saliva~~, or urine at the time of the alleged act.
  8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

**SECTION 6. AMENDMENT.** Section 20.1-15-01 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-01. Implied consent to determine alcoholic alcohol concentration and drug content presence of blood drugs.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test of the blood, breath, ~~saliva~~, or urine for the purpose of determining the ~~alcoholic, other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood, breath, or urine~~. As used in this chapter, "drug" means any drug or substance or combination of drugs or substances which renders a ~~person~~an individual incapable of safely hunting or being afield with a gun or other firearm or a bow and arrow, and "chemical test" means any test or tests to determine the ~~alcoholic, or other drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood, breath, saliva, or urine~~, approved by the director of the state crime laboratory or the director's designee under this chapter. The chemical test must be administered at the direction of a game warden or a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 20.1-15-04, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The game warden or law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the chemical test determined appropriate will result in a revocation of up to four years of the ~~person's~~individual's hunting privileges. The game warden or law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating section 20.1-01-06, the game warden or law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the game warden or law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 7. AMENDMENT.** Section 20.1-15-03 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-03. PersonsIndividuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a game warden or a law enforcement officer, may withdraw blood for the purpose of determining the ~~alcoholic, drug~~alcohol concentration or presence of other drugs, or combination thereof, ~~content of in the individual's blood~~. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood and shall issue a list of approved designations, including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is

medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a game warden or a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~an individual does not preclude the admission of the chemical test taken at the direction of a game warden or a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the game warden or law enforcement officer must be made available to that ~~person~~individual by the department or law enforcement agency that administered the chemical test.

**SECTION 8. AMENDMENT.** Subsections 2 and 3 of section 20.1-15-05 of the North Dakota Century Code are amended and reenacted as follows:

2. If a chemical test administered under section 20.1-15-01 or 20.1-15-04 was by ~~saliva or urine~~ sample or by drawing blood as provided in section 20.1-15-03 and the ~~person~~individual tested does not reside in an area in which the game warden or law enforcement officer has jurisdiction, the game warden or law enforcement officer shall, on receiving the analysis of the ~~saliva, urine,~~ or blood from the director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that ~~person's~~individual's reappearance within the game warden's or officer's jurisdiction or notify a game warden or law enforcement agency having jurisdiction where the ~~person~~individual resides. On that notification, that game warden or law enforcement agency shall immediately issue a statement of intent to revoke, suspend, or deny hunting privileges and take possession of the ~~person's~~individual's hunting license if it is then available and, within twenty-four hours, forward the license to the game warden or law enforcement agency making the arrest or to the director. The issuance of a statement of intent to revoke, suspend, or deny hunting privileges and the taking of possession of the ~~person's~~individual's hunting license serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny hunting privileges in this state.
3. The game warden or law enforcement officer, within five days of issuing the statement of intent and taking possession of the hunting license, shall forward to the director a certified written report in the form required by the director and the ~~person's~~individual's hunting license taken under subsection 1 or 2. If the notice was given and the license was taken because of the results of a chemical test, the report must show that the game warden or officer had reasonable grounds to believe the ~~person~~individual had been afield with a gun or other firearm or a bow and arrow while in violation of section 20.1-01-06, that the ~~person~~individual was lawfully arrested, that the ~~person~~individual was chemically tested under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten one-hundredths of one percent by weight. In addition to the report, the game warden or 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 game warden or officer.

**SECTION 9. AMENDMENT.** Subsections 2 and 4 of section 20.1-15-08 of the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns suspension of hunting privileges for being afield with a gun or other firearm or a bow and arrow while having an alcohol, other drug, or a combination thereof concentration of at least ten 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 warden or officer had reasonable grounds to believe the ~~person~~individual had been afield with a gun or other firearm or bow and arrow in violation of section 20.1-01-06; whether the ~~person~~individual was placed under arrest; whether the ~~person~~individual was tested in accordance with section 20.1-15-01 or 20.1-15-04 and, if applicable, section 20.1-15-03; and whether the chemical test results show the ~~person~~individual had an alcohol, other drug, or a combination thereof concentration of at least ten 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, ~~or urine, or saliva~~ sample from the director of the state crime laboratory or the director's designee, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol, other drug, or a combination thereof concentration shown therein. Whether the ~~person~~individual was informed that the privilege to hunt might be suspended based on the results of the chemical test is not an issue.
  
4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, ~~or urine, or saliva~~ sample received by the director from the director of the state crime laboratory or the director's designee or a game warden or a law enforcement officer, ~~or~~ a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol; ~~other drug concentration or the presence of other drugs,~~ or a combination thereof ~~concentration,~~ received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 10. AMENDMENT.** Section 20.1-15-11 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-11. Interpretation of chemical tests.**

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while being afield with a gun or other firearm or a bow and arrow while under the influence of intoxicating liquor, drugs, or a combination

thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine 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~~An individual having, at that time, an alcohol, other drug, or a combination thereof concentration of not more than five one-hundredths of one percent by weight is presumed not to be under the influence of intoxicating liquor, drugs, or a combination thereof.
2. Evidence that there was at that time more than five one-hundredths of one percent by weight alcohol, other drug, or a combination thereof concentration in ~~a person~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor, drugs, or a combination thereof.
3. ~~A person~~An individual having an alcohol, other drug, or a combination thereof 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 being afield with a gun or other firearm or a bow and arrow is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of being afield with a gun or other firearm or bow and arrow.
4. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic centimeters~~milliliters of urine.
5. The results of the chemical test 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 director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
6. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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 director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ 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, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  9. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof in the defendant's blood, breath, ~~saliva~~, or urine at the time of the alleged act.
  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 11. AMENDMENT.** Section 20.1-15-15 of the North Dakota Century Code is amended and reenacted as follows:

**20.1-15-15. Screening tests.**

Any ~~person~~individual who is afield with a gun or other firearm or a bow and arrow is deemed to have given consent to submit to an onsite screening test of the ~~person's~~individual's breath for the purpose of estimating the alcohol, ~~other drug, or a combination thereof~~ concentration in the ~~person's blood~~individual's breath upon the request of a game warden or a law enforcement officer who has reason to believe and has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol, ~~other drugs, or a combination thereof~~. A

~~person~~An individual may not be required to submit to a screening test of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement or objects to the test on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test must be performed by a game warden or an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of the screening test must be used only for determining whether a further test is to be given under the provisions of section 20.1-15-01. The officer shall inform the ~~person's~~individual that refusal of the ~~person's~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's hunting privileges. If the ~~person's~~individual refuses to submit to the screening test, none may be given, but the refusal is sufficient cause to revoke the ~~person's~~individual's hunting privileges in the same manner as provided in section 20.1-15-06, and a hearing as provided in section 20.1-15-08 and a judicial review as provided in section 20.1-15-09 must be available. However, the director may not revoke a ~~person's~~an individual's hunting privileges for refusing to submit to a screening test requested under this section if the ~~person's~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 20.1-15-01 for the same incident. This section does not supersede any provisions of sections 20.1-15-01 through 20.1-15-14, nor does any provision of sections 20.1-15-01 through 20.1-15-14 supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person's~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol, other drugs, or a combination thereof in a ~~person's~~an individual's blood, breath, ~~saliva~~, or urine.

**SECTION 12. AMENDMENT.** Subsection 4 of section 39-06.2-10.6 of the North Dakota Century Code is amended and reenacted as follows:

4. At a hearing under this section, the regularly kept records of the director and the state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and the state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood or urine sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration received by the director from the director of the state crime laboratory or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 13. AMENDMENT.** Section 39-20-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-01. Implied consent to determine alcohol concentration and ~~drug content~~presence of blood~~drugs~~.**

Any ~~person~~individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the alcohol, ~~other drug concentration or presence of other drugs~~, or combination thereof, ~~content of~~ the individual's blood, breath, or urine. As used in this chapter, the word "drug" means any drug or substance or combination of drugs or substances which renders ~~a person an individual~~ incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, ~~or other drug concentration or presence of other drugs~~, or combination thereof, ~~content of~~ the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime laboratory or the director's designee under this chapter. The test or tests must be administered at the direction of a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 39-20-03, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a child under section 27-20-13 or ~~a person an individual~~ under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the test determined appropriate will result in a revocation for up to four years of the ~~person's individual's~~ driving privileges. The law enforcement officer shall determine which of the tests is to be used. When ~~a person an individual~~ under the age of eighteen years is taken into custody for violating section 39-08-01 or an equivalent ordinance, the law enforcement officer shall attempt to contact the ~~person's individual's~~ parent or legal guardian to explain the cause for the custody. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter. The law enforcement officer shall mail a notice to the parent or legal guardian of the minor within ten days after the test results are received or within ten days after the minor is taken into custody if the minor refuses to submit to testing. The notice must contain a statement of the test performed and the results of that test; or if the minor refuses to submit to the testing, a statement notifying of that fact. The attempt to contact or the contacting or notification of a parent or legal guardian is not a precondition to the admissibility of chemical test results or the finding of a consent to, or refusal of, chemical testing by the ~~person~~individual in custody.

**SECTION 14. AMENDMENT.** Section 39-20-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-20-02. PersonsIndividuals qualified to administer test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, drug concentration or presence of other drugs, or combination thereof, ~~content therein~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime

laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of the ~~person's~~individual's choosing, who is medically qualified to draw blood, administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional test by a ~~person~~an individual does not preclude the admission of the test or tests taken at the direction of a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood; or urine; ~~or saliva~~ sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~individual by the law enforcement agency that administered the test or tests.

**SECTION 15. AMENDMENT.** Subsections 2, 3, and 4 of section 39-20-03.1 of the North Dakota Century Code are amended and reenacted as follows:

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~~individual 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 director of the state crime laboratory or the director's designee and if the analysis shows that ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual 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~~individual's reappearance within the officer's jurisdiction, proceed in accordance with subsection 3, or notify a law enforcement agency having jurisdiction where the ~~person~~individual lives. On that notification, that law enforcement agency shall, within twenty-four hours, forward 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 issue to that ~~person~~individual a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1.
3. If the test results indicate an alcohol concentration at or above the legal limit, the law enforcement agency making the arrest may mail a temporary operator's permit to the ~~person~~individual who submitted to the blood; or urine; ~~or saliva~~ test, whether or not the ~~person~~individual is a resident of the area in which the law enforcement officer has jurisdiction. The third day after the mailing of the temporary operator's permit is considered the date of issuance. Actual notice of the opportunity for a hearing under this section is deemed to have occurred seventy-two hours after the notice is mailed by regular mail to the address submitted by the ~~person~~individual to the law enforcement officer. The temporary operator's permit serves as the director's official notification to the ~~person~~individual of the director's intent to revoke, suspend, or deny driving privileges in this state.
4. 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. If the ~~person~~individual 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~~individual 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~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual 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 16. AMENDMENT.** Subsections 2 and 3 of section 39-20-03.2 of the North Dakota Century Code are amended and reenacted as follows:

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~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual 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~~individual 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. The third day after the mailing of the temporary operator's permit is considered the date of issuance.
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~~individual was issued a temporary operator's permit because of the ~~person's~~individual'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~~individual 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~~individual 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~~individual was lawfully arrested, that the ~~person~~individual was tested for alcohol concentration under this chapter, and that the results of the test show that the ~~person~~individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

**SECTION 17. AMENDMENT.** Subsections 2 and 4 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 eight one-hundredths of one percent by weight or, with respect to a ~~person~~ individual 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~~ individual 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~~ individual under twenty-one years of age, the ~~person~~ individual 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~~ individual was placed under arrest, unless the ~~person~~ individual was under twenty-one years of age and the alcohol concentration was less than 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~~ individual 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~~ individual had an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~ individual 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, or urine, or saliva sample from the director of the state crime laboratory or the director's designee or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration or the presence of drugs, or a combination thereof, shown therein. Whether the ~~person~~ individual was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
4. At a hearing under this section, the regularly kept records of the director and state crime laboratory may be introduced. Those records establish prima facie their contents without further foundation. For purposes of this chapter, the following are deemed regularly kept records of the director and state crime laboratory: ~~any~~
  - a. Any copy of a certified copy of an analytical report of a blood, or urine, or saliva sample received by the director from the director of the state crime laboratory or the director's designee or a law enforcement officer, or a certified copy of the checklist and test records received by the director from a certified breath test operator; ~~and any~~
  - b. Any copy of a certified copy of a certificate of the director of the state crime laboratory or the director's designee relating to approved methods, devices, operators, materials, and checklists used for testing for alcohol concentration or the presence of drugs received by the director from the director of the state crime laboratory, or the director's designee, ~~or the recorder, unless the board of county commissioners has designated a different official to maintain the certificate that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website.~~

**SECTION 18. 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~~individual 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, ~~concentration or presence of other~~ concentration or presence of other drugs, or a combination thereof, in the ~~person's individual's~~ individual's blood, ~~breath, or urine~~ breath, or urine at the time of the act alleged as shown by a chemical analysis of the blood, breath, ~~saliva,~~ saliva, or urine is admissible. For the purpose of this section:

1. ~~A person~~An individual 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~~an individual is relevant evidence, but it is not to be given prima facie effect in indicating whether the ~~person~~individual was under the influence of intoxicating liquor.
3. ~~A person~~An individual having an alcohol concentration of at least eight one-hundredths of one percent by weight or, with respect to a ~~person~~an individual 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 end expiratory breath or grams of alcohol per sixty-seven milliliters of urine.
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 director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee 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~~individual requested to take the chemical test.
6. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the ~~director and the recorder in each county, unless the board of county commissioners designates a different official~~state crime

laboratory division of the attorney general at the attorney general website, 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 director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~ certified records electronically posted under this section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental material has records have the same force and effect as the ~~material that it supplements~~ records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
7. Copies of the state crime laboratory certified records referred to in subsections 5 and 6, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ 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, ~~or urine, or saliva~~ analysis referred to in subsection 5 and which is issued by the director of the state crime laboratory or the director's designee 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~~ individual who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other 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 state crime laboratory, 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. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.
  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 19. AMENDMENT.** Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

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

Any ~~person~~individual who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the ~~person's~~individual's breath for the purpose of estimating the alcohol ~~content of~~concentration in the ~~person's blood~~individual's breath upon the request of a law enforcement officer who has reason to believe that the ~~person~~individual committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the ~~person's~~individual's body contains alcohol. A ~~person~~An individual may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of the ~~person's~~individual's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the ~~person~~individual that refusal of the ~~person~~individual to submit to a screening test will result in a revocation for up to four years of that ~~person's~~individual's driving privileges. If such ~~person~~individual refuses to submit to such screening test or tests, none may be given, but such refusal is sufficient cause to revoke such ~~person's~~individual's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 must be available. However, the director must not revoke a ~~person's~~an individual's driving privileges for refusing to submit to a screening test requested under this section if the ~~person~~individual provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a ~~person~~an individual certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in a ~~person's~~an individual's blood, breath, saliva, or urine.

**SECTION 20. AMENDMENT.** Section 39-24.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-01. Implied consent to determine alcohol concentration and drug content~~presence of blood~~drugs.**

A ~~person~~An individual who operates a snowmobile on any public land or private land with public access is deemed to have given consent, and shall consent, subject to this chapter, to a chemical test, or tests, of the blood, breath, ~~saliva~~, or urine for the purpose of determining the alcohol, ~~other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood, breath, or urine. As used in this chapter, the definitions in section 39-24-01 apply, and in addition, "chemical test" means any test or tests to determine the alcohol, ~~or other drug~~ concentration or presence of other drugs, or combination thereof, ~~content of in~~ the individual's blood, breath, ~~saliva~~, or urine, approved by the director of the state crime

laboratory or the director's designee under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a ~~person an~~ individual incapable of safely operating a snowmobile. The chemical test must be administered at the direction of a law enforcement officer only after placing the ~~person~~individual, except ~~persons~~individuals mentioned in section 39-24.1-04, under arrest and informing that ~~person~~individual that the ~~person~~individual is or will be charged with the offense of operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof. For the purposes of this chapter, the taking into custody of a minor under section 27-20-13 satisfies the requirement of an arrest. The law enforcement officer shall also inform the ~~person~~individual charged that refusal of the ~~person~~individual to submit to the chemical test determined appropriate will result in that ~~person~~individual being prohibited from operating a snowmobile for up to three years. The law enforcement officer shall determine the chemical test to be used. When a minor is taken into custody for violating subdivision c of subsection 5 of section 39-24-09, the law enforcement officer shall diligently attempt to contact the minor's parent or legal guardian to explain the cause for the custody and the implied consent chemical testing requirements. Neither the law enforcement officer's efforts to contact, nor any consultation with, a parent or legal guardian may be permitted to interfere with the administration of chemical testing requirements under this chapter.

**SECTION 21. AMENDMENT.** Section 39-24.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-24.1-03. ~~Persons~~Individuals qualified to administer chemical test and opportunity for additional test.**

Only an individual medically qualified to draw blood, acting at the request of a law enforcement officer, may withdraw blood for the purpose of determining the alcohol, ~~drug~~ concentration or presence of other drugs, or combination thereof, ~~content of~~ in the individual's blood. The director of the state crime laboratory or the director's designee shall determine the qualifications or credentials for being medically qualified to draw blood, and shall issue a list of approved designations including medical doctor and registered nurse. This limitation does not apply to the taking of a breath, ~~saliva~~, or urine specimen. The director of the state crime laboratory, or the director's designee, shall electronically post a copy of the certified list of approved designations, including medical doctor and registered nurse, with the state crime laboratory division of the attorney general at the attorney general website and shall make the certified records required by this section available for download in a printable format on the attorney general website. The ~~person~~individual tested may have an individual of that ~~person's~~individual's own choosing, who is medically qualified to draw blood, administer a chemical test in addition to any administered at the direction of a law enforcement officer with all costs of the additional chemical test to be the responsibility of the ~~person~~individual charged. The failure or inability to obtain an additional chemical test by a ~~person~~individual does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the ~~person~~individual who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, ~~or urine, or saliva~~ sample test taken at the direction of the law enforcement officer must be made available to that ~~person~~individual by the law enforcement agency that administered the chemical test.

**SECTION 22. AMENDMENT.** Section 39-24.1-08 of the North Dakota Century Code is amended and reenacted as follows:

### 39-24.1-08. Interpretation of chemical tests.

Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any ~~person~~individual while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the ~~person's~~individual's blood, breath, or urine 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~~An individual having a drug in that ~~person's~~individual's body or 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 operating a snowmobile is under the influence of intoxicating liquor, drugs, or a combination thereof at the time of operating a snowmobile.
2. Alcohol concentration is based upon grams of alcohol per one hundred ~~cubic centimeters~~milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven ~~cubic centimeters~~milliliters of urine.
3. The results of the chemical test 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 director of the state crime laboratory or the director's designee, and by an individual possessing a certificate of qualification to administer the test issued by the director of the state crime laboratory or the director's designee. The director of the state crime laboratory or the director's designee is authorized to approve satisfactory devices and methods of chemical tests and determine the qualifications of individuals to conduct such tests, and shall issue a certificate to every qualified operator. An operator shall exhibit the certificate upon demand of the ~~person~~individual requested to take the chemical test.
4. The director of the state crime laboratory or the director's designee 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 director of the state crime laboratory or the director's designee for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the ~~persons~~individuals qualified to administer them, the director of the state crime laboratory or the director's designee shall prepare, certify, and ~~file~~electronically post a written record of the approval with the director ~~and the recorder in each county, unless the board of county commissioners designates a different official~~state crime laboratory division of the attorney general at the attorney general website, 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 director of the state crime laboratory or the director's designee in using the devices during the administration of the tests.
  - d. ~~The material filed~~certified records electronically posted under this ~~subsection~~section may be supplemented when the director of the state crime laboratory or the director's designee determines it to be necessary, and any certified supplemental ~~material has~~records have the same force and effect as the ~~material that it supplements~~records that are supplemented.
  - e. The state crime laboratory shall make the certified records required by this section available for download in a printable format on the attorney general website.
5. Copies of the state crime laboratory certified records referred to in subsections 3 and 4, ~~certified by the recorder, or designated official, that have been electronically posted with the state crime laboratory division of the attorney general at the attorney general website~~ must be admitted as prima facie evidence of the matters stated in the records.
  6. A certified copy of the analytical report of a blood, or urine, ~~or saliva~~ test issued by the director of the state crime laboratory or the director's designee must be accepted as prima facie evidence of the results of a chemical test performed under this chapter.
  7. Notwithstanding any statute or rule to the contrary, the defendant in any criminal proceeding may subpoena, without cost to the defendant, the ~~person~~individual who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, concentration or presence of other drugs, or a combination thereof, in the defendant's blood, breath, ~~saliva,~~ or urine at the time of the alleged act.
  8. A signed statement from the individual medically qualified to draw the blood sample for testing as set forth in subsection 3 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of this evidence may be required.

Approved April 27, 2011  
Filed April 27, 2011

## CHAPTER 289

### HOUSE BILL NO. 1173

(Representatives Gruchalla, Koppelman, Ruby, Guggisberg)  
(Senators Nething, Wardner, Schneider)

AN ACT to amend and reenact section 39-21-01 of the North Dakota Century Code, relating to when headlamps and taillamps are required to be illuminated on a motor vehicle.

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

**SECTION 1. AMENDMENT.** Section 39-21-01 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-21-01. When lighted lamps are required.**

Subject to ~~the exceptions with respect to~~for parked vehicles, every vehicle upon a highway within this state must display lighted ~~lamps, headlamps, taillamps,~~ and illuminating devices as required in this chapter for different classes of vehicles as follows:

1. At any time from sunset to sunrise, and every farm tractor upon a highway within this state at any time from a half hour after sunset to a half hour before sunrise;
2. At any time when it is raining, snowing, sleeting, or hailing or during other adverse driving conditions and these conditions do not render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead; or
3. At any other time when visibility is impaired by weather, smoke, fog, or other conditions, or when there is insufficient light to render a person or vehicle on the highway clearly discernible at a distance of one thousand feet [304.8 meters] ahead.

Stoptlights, turn signals, and other signaling devices must be lighted as prescribed for the use of ~~such~~these devices.

Approved April 26, 2011  
Filed April 26, 2011

## CHAPTER 290

### HOUSE BILL NO. 1319

(Representatives Vigesaa, Ruby)  
(Senator G. Lee)

AN ACT to amend and reenact section 39-21-45 of the North Dakota Century Code, relating to air-conditioning equipment in motor vehicles; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-21-45 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-21-45. Air-conditioning equipment.**

1. The term "air-conditioning equipment", as used or referred to in this section, means mechanical vapor compression refrigeration equipment which is used to cool the driver's or passenger compartment of any motor vehicle.
2. Air-conditioning equipment must be manufactured, installed, and maintained with due regard for the safety of the occupants of the vehicle and the public and may not contain any refrigerant which is toxic to persons or which is flammable, unless the refrigerant is included in the list published by the United States environmental protection agency as a safe alternative motor vehicle air-conditioning substitute for chlorofluorocarbon-12, pursuant to 42 U.S.C. 7671k(c).
3. The department may adopt and enforce safety requirements, rules, and specifications consistent with the requirements of this section applicable to equipment which must correlate with and, so far as possible, conform to the current recommended practice or standard applicable to air-conditioning equipment approved by the society of automotive engineers.
4. No person may have for sale, offer for sale, sell, or equip any motor vehicle with any air-conditioning equipment unless it complies with the requirements of this section.
5. No person may operate on any highway any motor vehicle equipped with any air-conditioning equipment unless the equipment complies with the requirements of this section.

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

Approved April 4, 2011  
Filed April 4, 2011

## CHAPTER 291

### SENATE BILL NO. 2255

(Senator Wardner)

AN ACT to create and enact sections 39-22.1-01.1, 39-22.1-05, and 39-22.1-06 of the North Dakota Century Code, relating to the licensure of trailer dealers; and to amend and reenact sections 39-22-19, 39-22.1-01, 39-22.1-02, 39-22.1-03, and 39-22.1-04 of the North Dakota Century Code, relating to insurance for motor vehicle dealers and requirements for the licensing of trailer dealers; to provide a penalty; to provide an effective date; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-22-19 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-22-19. Garage liability insurance requirement.**

Before the issuance of a motor vehicle dealer license, the applicant must provide proof to the department of a continuous policy of ~~garage~~ liability insurance for the business operation of the applicant which includes general, business automobile, and sales, repair, or service operations liability as is appropriate to the business operation. The insurance company that issued the policy must notify the department of any cancellation, suspension, or revocation of the coverage. Any motor vehicle dealer who fails to maintain the insurance coverage required by this section shall return the dealer license and dealer number plates to the department on or before the effective date of the cancellation, suspension, or revocation. Failure to return the dealer license or dealer number plates results in automatic revocation by operation of law. The department may order the superintendent to take possession of any dealer license or dealer number plates not returned to the department as required in this section. The department shall reinstate the dealer license and dealer number plates only when proof of insurance coverage is received.

**SECTION 2. AMENDMENT.** Section 39-22.1-01 of the North Dakota Century Code is amended and reenacted as follows:

##### **39-22.1-01. Trailer dealer's license - Fees - Plates - Definition.**

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1. A person, ~~partnership, corporation, or limited liability company~~ may not engage in the business of buying, selling, or exchanging of trailers, or advertise or hold ~~oneself or itself~~ out to the public as being in the business of buying, selling, or exchanging of trailers without first being licensed ~~to do so~~ as hereinafter provided.
2. Application for dealer's license and renewal license must be made to the director on ~~such~~ forms as the director prescribes and furnishes, and the application must be accompanied by an annual fee of thirty dollars for which must be issued one dealer plate. The applicant for an initial trailer dealer license shall submit a nonrefundable fee of one hundred dollars for the initial

inspection with the application. A dealer's license expires on December thirty-first of each year, and application for renewal of a dealer's license must be made on or before the expiration of the current dealer's license. Any dealer who fails to submit a renewal application before the expiration of the dealer's current license, in addition to all other fees due, shall pay a one hundred dollar fee at the time the dealer's license is renewed.

3. A trailer dealer's license may be issued only to those who will maintain a permanent office and a primary established place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain that person's business records in one central location.
4. Upon the payment of a fee of ten dollars for each additional plate, the director shall register and issue dealer's license plates for use on any trailers owned by the licensed dealer, and the trailers bearing the dealer's license plates may be lawfully operated upon the public highways of ~~the state of North Dakota~~ this state by the dealer ~~or the dealer's agents or representatives~~ during the year of the registration, in the direct functions of demonstrating, buying, selling, or transporting trailers. A dealer's license plates expire on December thirty-first of each year.
5. The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

**SECTION 3.** Section 39-22.1-01.1 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-01.1. Primary established place of business - Penalty.**

1. If the licensee desires to move from the primary established place of business occupied when the license was granted to a new location, the licensee shall notify the director.
2. A licensed dealer may establish secondary trailer display lots in the conduct of the dealer's business. Secondary lots must be identified as a part of the licensed dealer's operation.
3. The department may assess a person violating this section a one hundred dollar fee for a first violation or a two hundred dollar fee for a second violation within two years of the first violation. The department may suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of this section occurs within five years of the first violation.

**SECTION 4. AMENDMENT.** Section 39-22.1-02 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-02. Bond required.**

Before the issuance of or the renewal of a trailer dealer's license, as provided by law, the applicant for ~~such~~ the license shall furnish a continuous surety bond executed by the applicant as principal and executed by a surety company licensed and qualified to do business within the state of North Dakota, which must be in the amount of ten thousand dollars, and be conditioned upon the faithful compliance by ~~said~~ the applicant as a dealer, if ~~such~~ the license be issued to the applicant, that ~~such~~ the dealer will comply with all the laws of ~~the~~ this state of North Dakota pertaining to ~~such~~ the business, and regulating or being applicable to the business of ~~said~~ the dealer

as a dealer in trailers, and indemnifying any person dealing or transacting business with ~~such the~~ dealer in connection with any trailer from any loss or damage occasioned by the failure of ~~such the~~ dealer to comply with the ~~provisions of the laws of the this~~ state of North Dakota, including, but not limited to, the furnishing of a proper and valid certificate of title to the vendee of a trailer within fifteen days of the sale of ~~such the~~ trailer, and that ~~such the~~ bond shall be filed with the director ~~prior to before~~ the issuance of the license ~~herein provided for~~. ~~Provided, however~~ ~~However~~, that the aggregate liability of the surety to all ~~such~~ persons for all ~~such~~ losses or damages may, ~~in no event~~, ~~not~~ exceed the amount of ~~such the~~ bond. Any third party sustaining injury within the terms of the bond may proceed against the principal and surety without making the state a party to any ~~such~~ proceedings. Any applicant bonded ~~pursuant to the provisions of under~~ chapter 39-18 or 39-22 may not be required to furnish the surety bond provided for in this section ~~whenever~~ if the bond issued ~~pursuant to under~~ chapter 39-18 or 39-22 is written to include the requirements of this section. The bond may be canceled by the surety, as to future liability, by giving written notice by certified mail, addressed to the principal at the address stated in the bond, and to the department. Thirty days after the mailing of the notice, the bond is null and void as to any liability ~~thereafter~~ arising ~~after that thirty days~~. The surety remains liable, subject to the terms, conditions, and provisions of the bond, until the effective date of the cancellation.

**SECTION 5. AMENDMENT.** Section 39-22.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-03. Suspension of, denial, revocation, or cancellation of dealer's license - Penalty.**

The director may ~~suspend or revoke any dealer's license for failure of the licensee to comply with any of the laws of the state of North Dakota governing trailer dealers,~~ deny an application for a dealer's license or suspend, revoke, or cancel a dealer's license ~~after it has been granted for making any material misstatement by an applicant in the application for a license; willfully failing to comply with this chapter; willfully violating a law relating to the sale, distribution, or financing of trailers; ceasing to have a primary established place of business; or for the failure~~ failing to comply with the reasonable rules and regulations of the director as established under chapter 28-32, but no order suspending or revoking a dealer's license may be made without a hearing at which the licensee must be given an opportunity to be heard. Any dealer violating ~~the provisions~~ any provision of this chapter 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 suspend the license of a trailer dealer licensed under this chapter if a third or subsequent violation of the chapter occurs within five years of the first violation.

**SECTION 6. AMENDMENT.** Section 39-22.1-04 of the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-04. Penalty Examination of books and records.**

~~Any person who violates the provisions of this chapter is guilty of a class B misdemeanor.~~ The director or any duly authorized representative may inspect the pertinent books, letters, records, and contracts of any licensed trailer dealer or any other person relating to any complaint made against the dealer or person and held to be in violation of this chapter. In addition, any duly authorized representative of the department may inspect the records of any licensed dealer to verify that fees collected for the department have been properly remitted.

**SECTION 7.** Section 39-22.1-05 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-05. Powers of the director.**

In addition to other powers provided by law, the director may:

1. Cancel, revoke, or suspend a dealer's license as provided for in section 39-22.1-03.
2. Adopt rules not inconsistent with this chapter governing the application for dealer's licenses and the cancellation or suspension or revocation of dealer's licenses.
3. Employ and pay any person as the director determines necessary to inspect dealers in this state or investigate dealers for information for the director to procure evidence in connection with any prosecution or other action to suspend, revoke, or cancel a dealer's license in relation to any matter in which the director has any duty to perform.

**SECTION 8.** Section 39-22.1-06 of the North Dakota Century Code is created and enacted as follows:

**39-22.1-06. Penalty.**

Any person who violates this chapter is guilty of a class B misdemeanor.

**SECTION 9. EFFECTIVE DATE.** Except as otherwise provided in this Act, this Act becomes effective on January 1, 2012.

**SECTION 10. EMERGENCY.** Section 1 of this Act is declared to be an emergency measure.

Approved April 26, 2011

Filed April 26, 2011

## CHAPTER 292

### HOUSE BILL NO. 1196

(Representatives Dahl, DeKrey, Grande)  
(Senators Nething, Oehlke, Robinson)

AN ACT to amend and reenact section 39-24.1-07 of the North Dakota Century Code, relating to operating a snowmobile while under the influence of alcohol or drugs; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-24.1-07 of the North Dakota Century Code is amended and reenacted as follows:

#### **39-24.1-07. Criminal penalties for operating snowmobile while having alcohol or drug concentrations.**

Upon conviction of a violation of subdivision c of subsection 5 of section 39-24-09, the court shall impose the following minimum penalties:

1. Notwithstanding subsection 7 of section 12.1-32-01, if the person's record indicates that, within the five years preceding the date of the offense, the person has not violated subdivision c of subsection 5 of section 39-24-09 or the person has not been prohibited from operating a snowmobile under this chapter, the offense is an infraction. The court shall impose a minimum fine of two hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for sixty days within the snowmobile season that runs from December first through April first.
2. ~~Notwithstanding subsection 7 of section 12.1-32-01, if~~ the person's record indicates that, within the five years preceding the date of the offense, the person has one violation of subdivision c of subsection 5 of section 39-24-09 or the person has once been prohibited from operating a snowmobile under this chapter, the offense is ~~an infraction~~ a class B misdemeanor. The court shall impose a minimum fine of three hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for one year from the date of the sentence.
3. If the person's record indicates that, within the five years preceding the date of the offense, the person has had at least two violations of subdivision c of subsection 5 of section 39-24-09 or the person has at least twice been prohibited from operating a snowmobile under this chapter, the offense is a class B misdemeanor. The court shall impose a minimum fine of four hundred fifty dollars and, as a condition of that person's probation, shall prohibit that person from operating a snowmobile on all public land or private land with public access for two years from the date of the sentence.

Approved April 11, 2011  
Filed April 11, 2011