

# MOTOR VEHICLES

## CHAPTER 323

### HOUSE BILL NO. 1075

(Representatives Carlisle, Henegar, R. Kelsch, Mahoney, Martinson)  
(Senator Nalewaja)

## DRIVING UNDER THE INFLUENCE PENALTIES

AN ACT to amend and reenact subsection 1 of section 39-01-01 and section 39-08-01 of the North Dakota Century Code, relating to the definition of an appropriate licensed addiction treatment program and to penalties for driving under the influence.

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

<sup>1</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. "Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of human services or conducted by a licensed individual specifically trained in addiction treatment.

**SECTION 2. AMENDMENT.** Section 39-08-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:
  - a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
  - b. That person is under the influence of intoxicating liquor.

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<sup>1</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1310, chapter 324, and section 1 of Senate Bill No. 2159, chapter 325.

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

The fact that any person charged with violating this section is or has been legally entitled to use alcohol or other drugs or substances is not a defense against any charge for violating this section, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

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

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
- e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 except that a fine or a sentence of imprisonment may be suspended in any of the following instances:
  - (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
  - (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service. The execution of the sentence may not be suspended nor the imposition of sentence deferred under subsection 3 or 4 of section 12.1-32-02.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.
- g. If the penalty mandated by this section includes imprisonment upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment under this section.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 324

### HOUSE BILL NO. 1310

(Representatives R. Kelsch, Huether, Stenehjem)  
(Senators Holmberg, Robinson)

## AUTHORIZED EMERGENCY VEHICLE DEFINITION

AN ACT to amend and reenact subdivision a of subsection 2 of section 39-01-01 of the North Dakota Century Code, relating to authorized emergency vehicles.

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

<sup>2</sup> **SECTION 1. AMENDMENT.** Subdivision a of subsection 2 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 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 ~~any~~ a municipal police department within the municipality or by ~~any~~ a sheriff or deputy sheriff ~~not to include~~ including special deputy sheriffs, or by the ~~warden of the state penitentiary~~ director of the department of corrections and rehabilitation and his 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.
  - ~~(4)~~ (5) Vehicles operated by or under the control of the director, ~~and~~ or a district deputy game warden of the ~~North Dakota~~ game and fish department.
  - ~~(5)~~ (6) Vehicles owned or leased by the United States ~~government~~ and used for law enforcement purposes.
  - ~~(6)~~ (7) Vehicles designated for the use of the adjutant general ~~and or~~ assistant adjutant general in cases of emergency.

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<sup>2</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1075, chapter 323, and section 1 of Senate Bill No. 2159, chapter 325.

- (7) (8) Vehicles operated by or under the control of the director of the ~~North Dakota~~ parks and recreation department.
- (9) Vehicles operated by or under the control of a licensed railroad police officer and used for law enforcement purposes.

Approved March 23, 1997

Filed March 24, 1997

## CHAPTER 325

### SENATE BILL NO. 2159

(Senators Tallackson, Sand)  
(Representatives Gorder, Henegar, Monson, Olson)

### SNOWMOBILE LIABILITY INSURANCE

AN ACT to create and enact subsection 11 to section 39-24-09 of the North Dakota Century Code, relating to liability insurance for snowmobiles; to amend and reenact subsection 38 of section 39-01-01 and section 39-24-11 of the North Dakota Century Code, relating to the definition of a motor vehicle and liability insurance for snowmobiles; and to provide a penalty.

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

<sup>3</sup> **SECTION 1. AMENDMENT.** Subsection 38 of section 39-01-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

38. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled, every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and, for purposes of motor vehicle registration, title registration, and operator's licenses, motorized bicycles. The term does not include a snowmobile as defined in section 39-24-01.

<sup>4</sup> **SECTION 2.** Subsection 11 of section 39-24-09 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

11. A person may not operate a snowmobile, and an owner of a snowmobile may not knowingly permit the snowmobile to be operated, upon any property maintained, leased, or owned by the state parks and recreation department to which the public has a right of access for snowmobile or other vehicular use, without a policy of liability insurance which insures the person named, and any person using the snowmobile with the express or implied permission of the person named, against loss from the liability imposed by law for damages arising out of the ownership, maintenance, or use of the snowmobile within this state, subject to the following limits, exclusive of interest and costs, with respect to each snowmobile: twenty-five thousand dollars because of bodily injury to or death of one person in any one accident and, subject to the limit for one person, fifty thousand dollars because of bodily injury to or death of two or more persons in any one accident, and twenty-five thousand dollars because of injury to or destruction of property of others in any one accident. Upon request of a law enforcement officer, a

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<sup>3</sup> Section 39-01-01 was also amended by section 1 of House Bill No. 1310, chapter 324, and section 1 of House Bill No. 1075, chapter 323.

<sup>4</sup> Section 39-24-09 was also amended by section 2 of Senate Bill No. 2160, chapter 347.

person operating a snowmobile shall provide proof of liability insurance to that officer within twenty days.

<sup>5</sup> **SECTION 3. AMENDMENT.** Section 39-24-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Approved April 9, 1997

Filed April 10, 1997

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<sup>5</sup> Section 39-24-11 was also amended by section 4 of Senate Bill No. 2160, chapter 347.

## CHAPTER 326

### HOUSE BILL NO. 1139

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

## HIGHWAY PATROLMEN'S RETIREMENT BENEFITS

AN ACT to amend and reenact subdivision a of subsection 4 of section 39-03.1-11 of the North Dakota Century Code, relating to computation of retirement benefits for the highway patrolmen's retirement system.

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

**SECTION 1. AMENDMENT.** Subdivision a of subsection 4 of section 39-03.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Normal retirement benefits for all contributors reaching the normal retirement date are payable monthly, and are:
  - (1) The first twenty-five years of credited service multiplied by three and ~~three~~ twenty-five hundredths percent of final average salary.
  - (2) All years in excess of twenty-five years of credited service multiplied by one and three-fourths percent of final average salary.
  - (3) All contributors who retired before ~~July 4, 1995~~ August 1, 1997, are entitled to receive benefits equal to three and ~~three~~ twenty-five hundredths percent of final average salary multiplied by the first twenty-five years of credited service, plus one and three-fourths percent of final average salary multiplied by credited service in excess of twenty-five years, with the increased benefits payable beginning ~~July 4, 1995~~ August 1, 1997.

Approved March 25, 1997  
Filed March 26, 1997



**CHAPTER 327****SENATE BILL NO. 2337**

(Senator Berg)  
(Representative Thorpe)

**COLLECTOR LICENSE PLATES**

AN ACT to amend and reenact section 39-04-10.6 of the North Dakota Century Code, relating to collector license plates.

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

**SECTION 1. AMENDMENT.** Section 39-04-10.6 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-04-10.6. Registration of motor vehicles owned by collectors.** A person who owns a motor vehicle that is at least twenty-five years old but that is not eligible for registration under section 39-04-10.4 may register that motor vehicle as a collector's motor vehicle. The motor vehicle is eligible for ~~such~~ collector's registration if it is owned and operated solely as a collector's item and if the owner owns another motor vehicle the owner uses for general transportation. A motor vehicle qualifies as a collector's item under this section only if it is operated on public streets and highways for the purpose of driving the vehicle to and from active entry and participation in parades, car shows, car rallies, other public gatherings held for the purpose of displaying or selling the vehicle, and to and from service or storage facilities. An applicant for registration of a vehicle as a collector's motor vehicle shall file an affidavit with the ~~registrar~~ director that states the owner's name and address, the make, year, and the manufacturer's identification number of the motor vehicle, and a statement that the motor vehicle is owned and operated solely as a collector's item and not for general transportation purposes. If the ~~registrar~~ director is satisfied that the affidavit is true and correct, the ~~registrar~~ director shall register the motor vehicle as a collector's motor vehicle on the payment of a registration fee of sixty dollars. The registration is valid as long as the collector's motor vehicle is owned by the person who applied for the registration under this section. The ~~registrar~~ director shall design and issue distinctive number plates for collector's motor vehicles registered under this section. In lieu of the distinctive number plates, the owner of the motor vehicle, at the discretion of the director, may display on the motor vehicle number plates from the year in which the motor vehicle was manufactured. The number plates from the year of manufacture may not be used in lieu of distinctive number plates when it would create a duplication of a number in the recordkeeping system of the department. Number plates from the year of manufacture must be legible and must be restored to the satisfaction of the department. A person violating this section or a department rule regarding this section forfeits the right to the registration provided in this section and any registration fees that have been paid.

Approved March 11, 1997  
Filed March 13, 1997

## CHAPTER 328

### SENATE BILL NO. 2269

(Senators B. Stenehjem, Nalewaja, O'Connell)  
(Representatives Carlisle, DeKrey)

## LAW ENFORCEMENT LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to license plates for law enforcement vehicles; and to amend and reenact subdivision b of subsection 2 of section 39-04-18 of the North Dakota Century Code, relating to motor vehicles exempt from registration.

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

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

Law enforcement plates. Upon request, the department shall issue identical plates that contain the word "SHERIFF" for the vehicles used and owned by a sheriff's department and the word "POLICE" for the motor vehicles used and owned by a city's police department. The plates must be in black letters and on the designed background in use at the time of issuance. The plates must be provided at actual cost. Notwithstanding section 39-04-11, the plates are the property of the law enforcement agency to which issued. At an appropriate time, replacement of the plates must occur whenever the designed background used by the state changes. Notwithstanding section 39-04-11, a motor vehicle that displays a plate under this section must have a clearly visible distinctive identification number on the rear of the vehicle assigned by the appropriate law enforcement agency.

**SECTION 2. AMENDMENT.** Subdivision b of subsection 2 of section 39-04-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Motor vehicles owned by or in possession of Indian mission schools, by this state or any of its agencies, departments, or political subdivisions, including school districts possessing a motor vehicle or vehicles used for driver education instruction, or by any entity located upon the international boundary line between the United States of America and Canada used and maintained as a memorial to commemorate the long-existing relationship of peace and good will between the people and the governments of the United States of America and Canada and to further international peace among the nations of the world; provided, however, that the vehicles must display license plates provided by the department at actual cost. Upon request, qualifying law enforcement motor vehicles must be issued a license plate under section 1 of this Act.

Each motor vehicle loaned or furnished by a licensed North Dakota motor vehicle dealer to a school district in North Dakota to be used exclusively for instructing pupils in the driver education and training program conducted by the school district will be assigned an official license plate bearing a decal with the words "driver

education" appearing on it. The license plates must be used only on the motor vehicles furnished by dealers and used in the driver education program, and for no other purpose except for garaging and safekeeping of the motor vehicle.

No person may use a motor vehicle bearing official license plates bearing a decal with the words "driver education" appearing on it as provided for in this subdivision for any purpose other than driver education course instruction. No person is in violation of this subdivision if he is required by the dealer or a school administrator to house or otherwise protect the vehicle at his home or other facility.

Approved March 21, 1997  
Filed March 21, 1997

## CHAPTER 329

### HOUSE BILL NO. 1346

(Representatives Soukup, Wilkie, Coats)  
(Senators Sand, Tallackson)

## VETERANS' CEMETERY LICENSE PLATES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to issuance of distinctive motor vehicle license plates to individuals eligible for interment in the North Dakota veterans' cemetery; and to amend and reenact section 21-10-06 of the North Dakota Century Code, relating to the state investment board.

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

**SECTION 1. AMENDMENT.** Section 21-10-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**21-10-06. Funds under management of board - Accounts.** The board is charged with the investment of the following funds:

1. State bonding fund.
2. Teachers' fund for retirement.
3. State fire and tornado fund.
4. Workers' compensation fund.
5. Veterans' home improvement fund, in accordance with section 37-15-14.1.
6. National guard tuition trust fund.
7. Public employees retirement system.
8. Insurance regulatory trust fund.
9. State risk management fund.
10. Veterans' cemetery trust fund.

Separate accounting must be maintained for each of the above funds. When it is deemed advantageous the moneys of the individual funds may be commingled for investment purposes.

The state investment board may provide investment services to, and manage the money of, any agency, institution, or political subdivision of the state, subject to agreement with the industrial commission. The scope of services to be provided by the state investment board to the agency, institution, or political subdivision must be specified in a written contract. The state investment board ~~is authorized to~~ may charge a fee for providing investment services and any revenue collected must be deposited in the state retirement and investment fund.

**SECTION 2.** A new section to chapter 39-04 of the North Dakota Century Code is created and enacted as follows:

**North Dakota veterans' cemetery number plates.**

1. The director may issue distinctive number plates to individuals eligible for interment in the North Dakota veterans' cemetery. The director shall issue a number plate under this section upon receiving:
  - a. Payment of all other fees required under this chapter for registration of a motor vehicle;
  - b. Payment of an annual fee of five dollars for deposit in the highway tax distribution fund; and
  - c. Verification of payment of an annual surcharge of ten dollars paid to the adjutant general.
2. The department shall collect the fees and surcharge under this section. The department shall report to the legislative assembly on the funds collected under this section during each legislative session. The department shall pay the funds collected under subdivision c of subsection 1 to the adjutant general monthly, who then, within ten days of receipt of the funds, shall deposit five dollars of each surcharge in the veterans' cemetery trust fund and the remaining five dollars of each surcharge in the veterans' cemetery maintenance fund in the state treasury. The state investment board shall manage the veterans' cemetery trust fund. The interest in the veterans' cemetery trust fund, subject to legislative appropriation, may be expended for salaries and maintenance of the veterans' cemetery.
3. The veterans' cemetery trust fund may accept funds from private and federal sources.

Approved April 3, 1997

Filed April 3, 1997

## CHAPTER 330

### HOUSE BILL NO. 1243

(Representatives Wald, Timm, Skarphol)  
(Senator Mutch)

## MOTOR VEHICLE BODY DAMAGE DISCLOSURE

AN ACT to amend and reenact sections 39-05-17.2 and 39-05-20.2 of the North Dakota Century Code, relating to motor vehicle body damage disclosure and salvage certificate of title; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Section 39-05-17.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **39-05-17.2. Body damage disclosure - Rules - When required - Penalty.**

1. ~~Before January 1, 1992, the~~ The department shall adopt rules relating to the manner and form of disclosing motor vehicle body damage on the certificate of title to a motor vehicle. The rules must provide for a damage disclosure statement from the transferor to the transferee at the time ownership of a motor vehicle is transferred and provide that the department must refuse to transfer the title without the required damage disclosure statement.
2. Motor vehicle body damage disclosure requirements apply only to the transfer of title on all current year models of motor vehicles and those models manufactured in the seven years before the current model year. When a motor vehicle has been subject to this disclosure requirement and more than eight years have elapsed since the date of manufacture, the holder of the certificate of title with the damage disclosure may have the disclosure removed and a new certificate of title issued for a fee of five dollars.
3. As used in this section, "motor vehicle damage" means a change in the body or structure of a motor vehicle, generally resulting from a vehicular crash or accident, including loss by fire, vandalism, weather, or submersion in water, resulting in damage to the motor vehicle which equals or exceeds the greater of five thousand dollars or forty percent of the predamage retail value of the motor vehicle as determined by the national automobile dealers association official used car guide. The term does not include body or structural modifications, normal wear and tear, glass damage, hail damage, or items of normal maintenance and repair.
4. A person repairing, replacing parts, or performing body work on a motor vehicle that is less than eight years old shall provide a statement to the owner of the motor vehicle when the motor vehicle has sustained motor vehicle damage requiring disclosure under this section. The owner shall disclose this damage when ownership of the motor vehicle is transferred. When a vehicle is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers

association official used car guide, the person repairing, replacing parts, or performing body work on the motor vehicle that is less than eight years old shall also advise the owner of the motor vehicle that the owner of the vehicle must comply with section 39-05-20.2.

5. The amount of damage to a motor vehicle is determined by adding the retail value of all labor, parts, and material used in repairing the damage. When the retail value of labor has not been determined by a purchase in the ordinary course of business, for example when the labor is performed by the owner of the vehicle, the retail value of the labor is presumed to be the product of the repair time, as provided in a generally accepted autobody repair flat rate manual, multiplied by thirty-five dollars.
6. A person who violates this section or rules adopted pursuant to this section is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 39-05-20.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-05-20.2. Issuance of salvage certificate of title.** ~~Any person or organization who completely destroys or completely dismantles a vehicle so as to cause that vehicle to lose its identity~~ The owner of a vehicle that is damaged in excess of seventy-five percent of its retail value as determined by the national automobile dealers association official used car guide, shall forward the title for that vehicle to the department within ten days and the department shall issue a salvage certificate of title.

If a vehicle for which a salvage certificate of title has been issued is reconstructed, a regular certificate of title may be obtained by completing an application for the certificate. The applicant shall include with the application a certificate of inspection in the form required by the department, the salvage certificate of title, and a five dollar fee. The department shall place on the regular certificate of title and on all subsequent certificates of title issued for the vehicle, a notation that damage disclosure information is available from the department. The department may not issue a new certificate unless the vehicle identification number of the vehicle has been inspected and found to conform to the description given in the application, or unless other proof of the identity of the vehicle has been provided to the satisfaction of the department.

Approved April 8, 1997  
Filed April 8, 1997

**CHAPTER 331****SENATE BILL NO. 2245**

(Senators O'Connell, Cook, Solberg)  
(Representatives S. Kelsh, Kretschmar, Maragos)

**CERTIFICATE OF TITLE TRANSFER DOCUMENTS**

AN ACT to amend and reenact section 39-05-19 of the North Dakota Century Code, relating to obtaining motor vehicle certificates of title.

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

**SECTION 1. AMENDMENT.** Section 39-05-19 of the North Dakota Century Code is amended and reenacted as follows:

**39-05-19. Obtaining certificate of title for vehicle when ownership obtained by other than voluntary means.** Whenever the ownership of any vehicle passes otherwise than by voluntary transfer, the transferee may obtain a certificate of title for the vehicle from the department upon application for the certificate and payment of a fee of five dollars. The application for the certificate must be accompanied by instruments or documents of authority, or ~~certified~~ copies thereof, as may be required by law to evidence or effect a transfer of title in or to chattels in such case. The department, when satisfied of the genuineness and regularity of such transfer, shall issue a new certificate of title to the person entitled thereto.

Approved March 11, 1997  
Filed March 13, 1997



## CHAPTER 332

### SENATE BILL NO. 2109

(Senator B. Stenehjem)

(At the request of the Department of Transportation)

## MOTOR VEHICLE OPERATOR LICENSING

AN ACT to amend and reenact subsection 5 of section 39-06-02, sections 39-06-07.1, 39-06-08, subsection 1 of section 39-06-14, sections 39-06-18, 39-06-20, subsection 2 of section 39-06.1-01, section 39-06.1-13, and subsection 6 of section 39-06.2-02 of the North Dakota Century Code, relating to motor vehicle operator's licensing exemptions, proof of name and date of birth, applications of minors, license color, change of address or name, definition of equivalent ordinance, reduction of point total, and definition of commercial motor vehicle.

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

**SECTION 1. AMENDMENT.** Subsection 5 of section 39-06-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A person over sixteen years of age who becomes a resident of ~~the~~ this state of ~~North Dakota~~ and who has in ~~his~~ that person's possession a valid operator's license issued to ~~him~~ that person pursuant to the laws of some other state or ~~province~~ country or by military authorities of the United States may operate a motor vehicle for a period of not more than sixty days after becoming a resident of this state, without being required to have a North Dakota operator's license.

**SECTION 2. AMENDMENT.** Section 39-06-07.1 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-07.1. Proof of name and date of birth for operator's license application.**

The name and date of birth on all applications must be verified by a birth certificate or other satisfactory evidence. Applicants must produce documents which will be acceptable as listed below:

1. ~~Birth~~ Certified birth certificate; or
2. Any other documentary evidence which confirms to the satisfaction of the ~~commissioner~~ director the true identity and date of birth of the applicant.

**SECTION 3. AMENDMENT.** Section 39-06-08 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-08. Application of minors.** The application of any minor for an instruction permit or operator's license must be signed and verified before a person authorized to administer oaths or the ~~commissioner's~~ director's agent, by the father, mother, or legal guardian, or, in the event there is no parent or legal guardian, then by another responsible adult who is willing to assume the obligation imposed under this chapter upon a person signing the application of a minor.

**SECTION 4. AMENDMENT.** Subsection 1 of section 39-06-14 of the 1995 Supplement to 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. If the licensee is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.2. No license is valid until it has been signed by the licensee with the licensee's usual signature. The department shall develop a system to require each applicant for an operator's license or renewal of an operator's license to determine whether or not the applicant wishes to be a donor under chapter 23-06.2. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.

**SECTION 5. AMENDMENT.** Section 39-06-18 of the North Dakota Century Code is amended and reenacted as follows:

**39-06-18. Duplicate certificates.** In the event that a permit or license issued under ~~the provisions of~~ this chapter is lost, mutilated, or destroyed, or contains erroneous information due to a change in name, address, or for any other reason, the person to whom the same was issued may obtain a duplicate, or substitute ~~thereof~~, upon furnishing proof satisfactory to the commissioner that ~~such the~~ permit or license has been lost, mutilated, or destroyed, or is erroneous, and upon payment of ~~an eight dollar a~~ fee. The fee is eight dollars for a duplicate or substitute permit or license for a license or permit that was lost, mutilated, or destroyed, or is being replaced for any other reason, except the fee is three dollars for a duplicate or substitute permit or license for a license or permit that contains erroneous information due to a change in name or address.

**SECTION 6. AMENDMENT.** Section 39-06-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06-20. Notice of change of address or name.** Whenever ~~any~~ a person after applying for or receiving an operator's license or permit moves from the address named in ~~such the~~ application or in the license or permit issued to ~~such that~~ person or when the name of a licensee is changed by marriage or otherwise, ~~such that~~ person shall within ten days thereafter notify the director in writing or in person of ~~such that~~ person's old and new addresses or of such former and new names and of the number of any license or permit then held by ~~such that~~ person. Such A person may obtain a corrected license or permit by making application as provided for in section 39-06-18. In the event of a name change, a corrected license must be obtained. The department may change the address based on information received from any authorized address correction service of the United States postal service.

**SECTION 7. AMENDMENT.** Subsection 2 of section 39-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Equivalent ordinance" or "equivalent ordinances" means city, state, or other jurisdiction ordinances which are comparable to the cited statute, and define essentially the same offense, despite the fact that the language of the ordinance may differ, or differing procedural points or methods of proof may be provided.

**SECTION 8. AMENDMENT.** Section 39-06.1-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06.1-13. Reduction of point total - Other methods.**

1. The licensing authority shall reduce the point total shown on any licensee's driving record by one point for each three-month period during which no points are recorded against the licensee's driving record for a moving violation or a violation listed in paragraphs 12 through 16 of subdivision a of subsection 3 of section 39-06.1-10. The three-month period must be calculated from the date of entry of the last points against that licensee's driving record.
2. The point total shown on a licensee's driving record must, during any twelve-month period, be reduced by three points when the licensee mails or delivers a certificate to the licensing authority indicating successful completion of instruction in a driver training course approved by the licensing authority. Successful completion of instruction must be certified to by the sponsoring agency or organization of the driver training course. The reduction in points authorized by this subsection must only be from a point total accumulated prior to completion of the necessary hours of driver training instruction, and may not exceed nine points during any three-year period commencing on the date of entry of the last points against the person's driving record. If on the date the licensing authority receives the certificate of completion of the driver training course from the licensee that licensee's driving record contains twelve or more points, the point reduction authorized by this subsection must be applied only after the period of suspension required by the number of points then on the driver's record has been served.
- ~~3. The point total shown on a licensee's driving record must be reduced by seven points for successful completion of an inpatient or outpatient alcoholism or narcotics treatment program approved by the state department of human services. No reduction of points may be made under this subsection, unless the licensee's driving record included, at the time of suspension, points assigned for violation of section 39-08-01, or an equivalent ordinance. The provisions of this subsection shall not have application prior to the termination of the suspension period imposed on the driver.~~

**SECTION 9. AMENDMENT.** Subsection 6 of section 39-06.2-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:

- a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
- b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
- ~~b.~~ c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
- ~~e.~~ d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.

Approved March 21, 1997  
Filed March 21, 1997

**CHAPTER 333****HOUSE BILL NO. 1267**

(Representative Oban)

**MOTOR VEHICLE OPERATOR LICENSE  
EXAMINATIONS**

AN ACT to amend and reenact section 39-06-13 of the North Dakota Century Code, relating to motor vehicle operator's license examinations.

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

**SECTION 1. AMENDMENT.** Section 39-06-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-06-13. Examination of applicants.** The ~~commissioner~~ director shall examine every applicant for an operator's license, except as otherwise provided in this chapter. The examination must include a test of the applicant's eyesight, ability to read and understand highway signs regulating, warning, and directing traffic, and knowledge of the traffic laws of this state. During testing, any written portion of the examination, except writing on illustrations of signs, must be made available to an applicant in any widely practiced language. An actual demonstration of ability to exercise ordinary and reasonable control in the operation of a motor vehicle is also required, but may be waived for an applicant who has successfully passed ~~such a~~ an actual ability test in this or another state. Operators' examinations must be given at locations designated by the ~~commissioner~~ director. The ~~commissioner~~ director may require ~~such~~ any other physical or mental examination ~~as may be deemed~~ advisable.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 334

### HOUSE BILL NO. 1111

(Representatives Martinson, Carlisle, DeKrey)

(Senators Andrist, Kringstad, Nalewaja)

(At the request of the Department of Transportation)

### MINORS DUI CONCENTRATION LEVEL

AN ACT to amend and reenact subsection 7 of section 39-06-32, sections 39-20-01, 39-20-03.1, 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2, 3, and 5 of section 39-20-05, subsection 3 of section 39-20-07, and section 39-20-09 of the North Dakota Century Code, relating to the illegal level of alcohol and drug concentration for motor vehicle operators under twenty-one years of age.

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

**SECTION 1. AMENDMENT.** Subsection 7 of section 39-06-32 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 2. AMENDMENT.** Section 39-20-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Any person 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, or combination thereof, content of the blood. As used in this chapter the word "drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and the words "chemical test" or "chemical analysis" mean any test to determine the alcohol, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter. The

test or tests must be administered at the direction of a law enforcement officer only after placing the person, except persons mentioned in section 39-20-03, under arrest and informing that person that the person 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 under twenty-one years of age satisfies the requirement of an arrest. The law enforcement officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for up to three years of the person's driving privileges. The law enforcement officer shall determine which of the tests is to be used. When a person 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 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 in custody.

**SECTION 3. AMENDMENT.** Section 39-20-03.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately take possession of the person's North Dakota operator's license or permit if it is then available and, within twenty-four hours, forward the license and a copy of the temporary operator's permit to the law enforcement agency making the arrest or to the director. The law enforcement agency shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the permit as provided in subsection 1. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state.

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

**SECTION 4. AMENDMENT.** Section 39-20-03.2 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the



person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter.

2. If the test was administered by saliva or urine sample or by drawing blood, the law enforcement officer, on reviewing the alcohol concentration analysis showing the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of mailing or until earlier terminated by the decision of a hearing officer under section 39-20-05, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit must be signed and dated by the officer.
3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the director a certified written report in the form required by the director and a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood, saliva, or urine test for all tests administered at the direction of the officer. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the report must include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01, or equivalent ordinance, that the person was lawfully arrested, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight.

**SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:

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

**SECTION 6. AMENDMENT.** Subsections 2, 3, and 5 of section 39-20-05 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the director and at a time and place designated by the director. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest, unless the person was under twenty-one years of age and the alcohol concentration was less than ten one-hundredths of one percent by weight, then arrest is not required and is not an issue under any provision of this chapter; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether the test results show the person had an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight. For purposes of this section, a copy of a certified copy of an analytical report of a blood, urine, or saliva sample from the state toxicologist, or a certified copy of the checklist and test records from a certified breath test operator establish prima facie the alcohol concentration shown therein. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.
3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the

hearing must be before a hearing officer assigned by the director at a time and place designated by the director. The hearing must be recorded. The scope of a hearing for refusing to submit to a test under section 39-20-01 may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of section 39-08-01 or equivalent ordinance or, with respect to a person under twenty-one years of age, the person had been driving or was in actual physical control of a vehicle while having an alcohol concentration of at least two one-hundredths of one percent by weight; whether the person was placed under arrest; and whether that person refused to submit to the test or tests. The scope of a hearing for refusing to submit to a test under section 39-20-14 may cover only the issues of whether the law enforcement officer had reason to believe the person committed a moving traffic violation or was involved in a traffic accident as a driver, whether in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol and, whether the person refused to submit to the onsite screening test. Whether the person was informed that the privilege to drive would be revoked or denied for refusal to submit to the test or tests is not an issue.

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

<sup>6</sup> **SECTION 7. AMENDMENT.** Subsection 3 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>6</sup> Section 39-20-07 was also amended by section 1 of House Bill No. 1083, chapter 345, and section 1 of House Bill No. 1084, chapter 346.

3. A person having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a 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.

**SECTION 8. AMENDMENT.** Section 39-20-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Approved April 8, 1997  
Filed April 8, 1997

**CHAPTER 335****HOUSE BILL NO. 1108**  
(Representatives DeKrey, Carlisle)**DRIVING UNDER SUSPENSION PENALTY**

AN ACT to amend and reenact subsection 1 of section 39-06-42 of the North Dakota Century Code, relating to the suspension or revocation of an operator's license; and to provide a penalty.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-06-42 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as provided in chapters 39-16 and 39-16.1 and section 39-06.1-11, any person who drives 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 while that person's license or privilege so to do is suspended or revoked in any jurisdiction is guilty of a class B misdemeanor for the first, second, or third offense within a five-year period. Any subsequent offense within the same five-year period is a class A misdemeanor.

Approved February 11, 1997  
Filed February 11, 1997

## CHAPTER 336

### SENATE BILL NO. 2352

(Senators Kringstad, Lips, W. Stenehjem)  
(Representatives Glassheim, R. Kelsch, Martinson)

### NONMOVING VIOLATION FEES

AN ACT to amend and reenact subsection 1 of section 39-06.1-06 of the North Dakota Century Code, relating to fees for nonmoving violations.

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

<sup>7</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 39-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For a nonmoving violation as defined in section 39-06.1-08, a fee of ~~ten~~ any amount not to exceed twenty dollars.

Approved March 25, 1997  
Filed March 26, 1997

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<sup>7</sup> Section 39-06.1-06 was also amended by section 1 of House Bill No. 1074, chapter 337.

## CHAPTER 337

### HOUSE BILL NO. 1074

(Representatives Wald, Belter, Byerly, Grosz)  
(Senators Kelsh, Solberg)

### HIGHWAY SPEED LIMITS

AN ACT to create and enact a new subdivision to subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to speed limits greater than fifty-five miles an hour; and to amend and reenact subsection 8 of section 39-06.1-06, paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10, and subdivisions f and g of subsection 1 of section 39-09-02 of the North Dakota Century Code, relating to the speed limits and fees and demerits for violations of the speed limit.

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

<sup>8</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 39-06.1-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as ~~posted and designated by the commissioner pursuant to subdivision g of subsection 4 of section 39-09-02~~, for a violation of section 39-09-02, or an equivalent ordinance, a fee established as follows:

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

**SECTION 2. AMENDMENT.** Paragraph 34 of subdivision a of subsection 3 of section 39-06.1-10 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (34) On a highway on which the speed limit is a speed higher than fifty-five miles [88.51 kilometers] an hour as ~~posted and designated by the commissioner pursuant to subdivision g of subsection 4 of~~

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<sup>8</sup> Section 39-06.1-06 was also amended by section 1 of Senate Bill No. 2352, chapter 336.

~~section 39-09-02~~, operating a motor vehicle in excess of the speed limit in violation of section 39-09-02, or equivalent ordinance

Miles per hour over lawful speed limit	Points
6 - 10	1
11 - 15	4
16 - 25	7
26 - 35	10
36 +	12

**SECTION 3. AMENDMENT.** Subdivisions f and g of subsection 1 of section 39-09-02 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- f. Fifty-five miles [88.51 kilometers] an hour ~~under other circumstances~~ on gravel, dirt, or loose surface highways, and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise, unless otherwise permitted, restricted, or required by conditions; ~~and except as provided in subdivision g.~~
- g. ~~If a speed higher than fifty-five~~ Sixty-five miles [~~88.51~~ 104.61 kilometers] an hour ~~is permitted under federal law without loss of federal funds to this state, and on paved two-lane highways if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed, and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions; any higher speed so permitted and so designated and posted by the commissioner.~~

**SECTION 4.** A new subdivision to subsection 1 of section 39-09-02 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Seventy miles [112.65 kilometers] an hour on access controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.

Approved April 3, 1997  
Filed April 3, 1997



## CHAPTER 338

### SENATE BILL NO. 2212

(Senators O'Connell, Schobinger, B. Stenehjem)  
(Representatives Boehm, Maragos, Sveen)

## TEMPORARY RESTRICTED MOTOR VEHICLE OPERATORS' LICENSES

AN ACT to amend and reenact subsection 2 of section 39-06.1-11 of the North Dakota Century Code, relating to temporary restricted motor vehicle operators' licenses.

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

**SECTION 1. AMENDMENT.** Subsection 2 of section 39-06.1-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If the licensing authority has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, the authority may, in accordance with this section, for good cause, and upon written application of the offender, issue a temporary restricted license ~~which~~ that takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The licensing authority may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if no offenses have been committed for a period of two years before the date of the filing of a written application accompanied by a report from an addiction facility. The ~~commissioner~~ director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior for the two-year period. The ~~commissioner~~ director may also require that an ignition interlock device be installed in the offender's vehicle. The licensing authority may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17, section 39-06-31, or subsection 3.1 of section 39-06.1-10; ~~or section 39-20-04~~. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct; ~~but no temporary restricted license may be issued for suspensions ordered under subsection 4 of section 39-06-32.~~

Approved March 13, 1997  
Filed March 13, 1997

## CHAPTER 339

### HOUSE BILL NO. 1224 (Representative Belter) (Senator G. Nelson)

## AGRICULTURAL COMMODITY TRANSPORTATION HOURS OF SERVICE

AN ACT to create and enact a new section to chapter 39-06.2 of the North Dakota Century Code, relating to commercial drivers transporting agricultural commodities; to amend and reenact section 39-21-44 of the North Dakota Century Code, relating to the transportation of hazardous materials; and to declare an emergency.

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

**SECTION 1.** A new section to chapter 39-06.2 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

**Hours of service exemption - Transportation of agricultural commodities.** Federal regulations governing maximum driving and on-duty time do not apply to a driver transporting agricultural commodities or farm supplies, including farm equipment and machinery, for agricultural purposes in this state during planting and harvesting seasons from February fifteenth through December fifteenth, if the transportation is limited to an area within a one hundred air-mile radius from the source of the commodities or the distribution point for the farm supplies.

**SECTION 2. AMENDMENT.** Section 39-21-44 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-21-44. Vehicle transporting explosives or hazardous materials - Administrative procedure and judicial review.** Any person operating any vehicle transporting any explosive or hazardous material as a cargo or part of a cargo upon a highway shall comply with this section.

1. The vehicle must be equipped with at least one fire extinguisher, filled and ready for immediate use, and placed at a convenient point on the vehicle.
2. The superintendent of the state highway patrol shall adopt rules for the safe transportation of hazardous materials. Rules must duplicate or be consistent with current hazardous materials regulations of the United States department of transportation ~~except that a fertilizer or agricultural chemical retailer, or a driver employed by a fertilizer or agricultural chemical retailer, is exempt from the provisions of title 49, Code of Federal Regulations, part 395, section 3, subsection b, relating to hours of service of drivers, and title 49, Code of Federal Regulations, part 395, section 8, requiring a driver's record of duty status, while exclusively engaged in the transportation of fertilizer or agricultural chemicals when the transportation is within a radius of fifty miles [80.47 kilometers] from the retailer's place of business and the employer maintains a daily record for each driver showing the time a driver reports for duty, the total~~

~~number of hours a driver is on duty, and the time a driver is released from duty.~~ The superintendent of the state highway patrol may adopt the hazardous materials regulations by reference and any adoption must be construed to incorporate amendments as may be made from time to time.

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

Approved March 25, 1997

Filed March 26, 1997

**CHAPTER 340****SENATE BILL NO. 2090**

(Senator Lips)

(At the request of the Department of Transportation)

**ACCIDENTS INVOLVING SNOW REMOVAL  
EQUIPMENT**

AN ACT to amend and reenact section 39-09-01 of the North Dakota Century Code, relating to careless driving involving snow removal equipment; to provide a penalty; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Section 39-09-01 of the North Dakota Century Code is amended and reenacted as follows:

**39-09-01. Basic rule - Penalty for violation.** No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving, and must be assessed a fee of thirty dollars.

Any person who, by reason of careless driving as herein defined, causes and inflicts injury upon the person of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars to snow removal equipment engaged in snow removal is guilty of an infraction.

As used in this section, "snow removal equipment" means a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding.

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

Approved March 6, 1997

Filed March 6, 1997

**CHAPTER 341****HOUSE BILL NO. 1095**

(Representative Coats)

**SCHOOLBUS STROBE LIGHTS**

AN ACT to amend and reenact subsections 1 and 4 of section 39-10-46, sections 39-21-18, and 39-21-27 of the North Dakota Century Code, relating to schoolbus strobe lights.

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

**SECTION 1. AMENDMENT.** Subsections 1 and 4 of section 39-10-46 of the 1995 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The driver of a vehicle meeting or overtaking from either direction any schoolbus stopped on the highway shall stop the vehicle before reaching the schoolbus when there is in operation on the schoolbus the flashing red lights; or the stop sign on the control arm; ~~or the safety strobe lights specified in section 39-21-18, and the driver may not proceed until such the schoolbus resumes motion or he, the driver is signaled by the schoolbus driver to proceed, and the stop sign on the control arm; ~~and the safety strobe lights are no longer actuated.~~~~
4. Every schoolbus ~~may be equipped with safety strobe lights and~~ must be equipped with a stop sign on a control arm and red visual signals meeting the requirements of section 39-21-18, which may only be actuated by the driver of the schoolbus whenever the vehicle is stopped on the highway to receive or discharge schoolchildren. ~~A schoolbus driver may not actuate the stop sign or the special visual signals:~~
  - a. ~~On city streets on which the receiving or discharging of schoolchildren is prohibited by ordinance;~~
  - b. ~~At intersections or other places where traffic is controlled by traffic-control signals or police officers; or~~
  - e. ~~In designated schoolbus loading areas where the bus is entirely off the roadway.~~

**SECTION 2. AMENDMENT.** Section 39-21-18 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-18. Audible and visual signals on vehicle.**

1. Every authorized emergency vehicle must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with a siren, exhaust whistle, or bell capable of causing a minimum sound intensity level of eighty-five decibels; ~~such.~~ The siren or signal must be mounted outside of the vehicle or in front of the radiator.

2. Every schoolbus, except small vehicles such as automobiles, station wagons, suburbans, and van-type vehicles having a seating capacity of up to and including sixteen pupils, and every Any authorized emergency vehicle may be equipped with safety strobe lights and must, in addition to any other equipment and distinctive markings required by this chapter, be equipped with:
  - a. Signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet [152.4 meters] in normal sunlight; and
  - b. A stop sign on a control arm that can be activated by the busdriver. The stop sign on the control arm must be located on the left side of the bus; be equipped with a flashing red light; and when activated, extend out from the bus at approximately a ninety degree angle.
3. A police vehicle when used as an authorized emergency vehicle may, ~~but need not~~, be equipped with alternately flashing red lights specified herein and a vehicle designated for the use of the adjutant general or the assistant adjutant general may, ~~but need not~~, be equipped with a siren, exhaust whistle, or bell specified herein.
4. The use of the signal equipment described herein imposes upon drivers of other vehicles the obligation to yield right of way and stop as prescribed in sections 39-10-26 and 39-10-46. Every schoolbus, except vehicles with a seating capacity of less than sixteen students, must be equipped with:
  - a. Signal lamps mounted as high and as widely spaced laterally as practicable, which must be capable of displaying to the front two alternately flashing red lights located at the same level and to the rear two alternately flashing red lights located at the same level, and these lights must have sufficient intensity to be visible at five hundred feet [152.4 ] in normal sunlight;
  - b. A stop sign on a control arm that can be activated by the busdriver. The stop sign on the control arm must be located on the left side of the bus, be equipped with a flashing red light, and when activated, extend out from the bus at approximately a ninety degree angle; and
  - c. Safety strobe lights if the schoolbus was manufactured after July 31,1998. Older schoolbuses may have safety strobe lights installed.

**SECTION 3. AMENDMENT.** Section 39-21-27 of the North Dakota Century Code is amended and reenacted as follows:

**39-21-27. Special lighting and warning equipment on schoolbuses.**

1. The superintendent of public instruction<sub>1</sub>, in cooperation with the registrar<sub>1</sub>, is authorized to adopt standards and specifications applicable to lighting equipment on and special warning devices, including the stop

sign on a control arm specified in section 39-21-18, to be carried by schoolbuses and other vehicles transporting children to school for compensation, consistent with the provisions of this chapter, but supplemental thereto. ~~Such~~ The standards and specifications must correlate with and, so far as possible, conform to the specifications then current as approved by the society of automotive engineers.

2. It is unlawful to operate any flashing warning signal light or the stop sign on the control arm specified in section 39-21-18 on ~~any~~ a schoolbus except when ~~any~~ ~~said~~ the schoolbus is stopped on a highway for the purpose of permitting schoolchildren to board or alight from ~~said~~ the schoolbus.
3. Schoolbuses equipped with safety strobe lights pursuant to subsection 4 of section 39-21-18 must have the safety strobe light in operation whenever the schoolbus is being operated upon a highway for purposes of transporting children either to or from school or for a school sanctioned activity. It is unlawful to operate a safety strobe light on a schoolbus when the schoolbus is used for any other purpose.

Approved March 20, 1997

Filed March 20, 1997

## CHAPTER 342

### HOUSE BILL NO. 1186

(Representatives Belter, Nelson)  
(Senators G. Nelson, Wanzek)

## FERTILIZER SPREADER MOVEMENT ON HIGHWAYS

AN ACT to amend and reenact subsection 1 of section 39-12-04 of the North Dakota Century Code, relating to commercial movement of fertilizer spreaders and agricultural chemical applicators; and to declare an emergency.

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

**SECTION 1. AMENDMENT.** Subsection 1 of section 39-12-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A total outside width, including load thereon, of eight feet six inches [2.59 meters]. This limitation does not apply to:
  - a. Construction and building contractors' equipment and vehicles used to move such equipment which does not exceed ten feet [3.05 meters] in width when being moved by contractors or resident carriers.
  - b. Implements of husbandry being moved by resident farmers, ranchers, dealers, or manufacturers between sunrise and sunset. Furthermore, the limitation does not apply to implements of husbandry being moved between sunset and sunrise by resident farmers, ranchers, dealers, or manufacturers on public state, county, or township highway systems other than interstate highway systems.
  - c. Hay in the stack or bale being moved along the extreme right edge of a roadway between sunrise and sunset by someone other than a commercial mover.
  - d. Commercial movement of haystacks or hay bales with vehicles designed specifically for hauling hay, ~~overwidth~~ commercial movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, whether operating under their own power or being transported by another vehicle, and overwidth the commercial movement of hay grinders, which may be operated ~~moved~~ on the highway after obtaining a permit issued by the highway patrol. The highway patrol shall issue permits that are valid during daylight hours on any day of the week, or that are valid at all times for the movement of self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators, to any commercial mover entity otherwise qualified under this subdivision. Self-propelled fertilizer spreaders and self-propelled agricultural chemical applicators operating under their own power between sunset and sunrise must display vehicle hazard warning signal lamps as described in subsection 3 of section 39-21-19.1. The



permit is in lieu of registration requirements for the permit period. No permit may be issued, unless proof of financial responsibility in a minimum of three hundred thousand dollars is filed and the appropriate permit fee is paid. The permit may also be issued for hauling hay bales with vehicles or vehicle combinations other than those designed specifically for hauling haystacks. This permit, however, will not be in lieu of registration requirements. All permit fees must be deposited in the state highway distribution fund.

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

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

Approved March 26, 1997  
Filed March 26, 1997

## CHAPTER 343

### SENATE BILL NO. 2126

(Senator Thompson)

(At the request of the Department of Transportation)

### MOBILE HOME DEALER LICENSING FEES

AN ACT to amend and reenact sections 39-18-01 and 39-22.1-01 of the North Dakota Century Code, relating to mobile home and trailer dealer licensing fees.

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

**SECTION 1. AMENDMENT.** Section 39-18-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-18-01. Mobile home dealer's license - Fees - Dealer's plates.** No person, partnership, corporation, or limited liability company may engage in the business of buying, selling, or exchanging of mobile homes or travel trailers, or advertise or hold ~~himself~~ oneself or itself out to the public as being in the business of buying, selling, or exchanging of mobile homes or travel trailers without first being licensed to do so as hereinafter provided.

Application for dealer's license and renewal license must be made to the department on such forms as the department ~~shall prescribe~~ prescribes and ~~furnish~~ furnishes, and ~~such~~ the application must be accompanied by an annual fee of thirty-five dollars- ~~Such~~ for which must be issued one dealer plate. A dealer's license expires on December thirty-first of each year, and application for renewal of ~~such~~ a dealer's license must be made on or before the expiration of the current dealer's license.

A mobile home dealer's license must be issued only to those who will maintain a permanent office and place of business, and an adequate service department, during the licensing year, and will abide by all the provisions of law pertaining to mobile home dealers.

In addition, the dealer shall maintain ~~his~~ that person's business records in one central location.

Upon the payment of the fee of ten dollars for each additional plate, the department shall register and issue dealer's license plates for use on any mobile homes owned by the licensed dealer, and ~~such~~ the mobile homes bearing ~~such~~ the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by ~~such~~ the dealer, ~~his~~ the dealer's agents and servants, during the year of ~~such~~ the registration. ~~Such~~ A dealer's license plates expire on December thirty-first of each year.

The term "mobile home" as used in this chapter includes and has the same meaning as "housetrailer", and both terms have the meaning prescribed in subsection 82 of section 39-01-01. The term "travel trailer" as used in this chapter has the meaning as prescribed in section 39-01-01.

Any mobile home dealer licensed under the provisions of this chapter may sell house cars without being licensed under the provisions of chapter 39-22. A mobile home dealer plate displayed on a house car must be displayed on the rear of the vehicle.

**SECTION 2. AMENDMENT.** Section 39-22.1-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-22.1-01. Trailer dealer's license - Fees - Plates.** No person, partnership, corporation, or limited liability company may 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.

Application for dealer's license and renewal license must be made to the director on such forms as the director ~~shall prescribe~~ prescribes and ~~furnish~~ furnishes, and ~~such the~~ application must be accompanied by an annual fee of ~~twenty thirty~~ thirty dollars: ~~Such for which must be issued one dealer plate.~~ A dealer's license expires on December thirty-first of each year, and application for renewal of ~~such a~~ a dealer's license must be made on or before the expiration of the current dealer's license.

A trailer dealer's license may be issued only to those who will maintain a permanent office and place of business and will abide by all the provisions of law pertaining to trailer dealers. In addition, the dealer shall maintain ~~his~~ that person's business records in one central location.

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 ~~such the~~ trailers bearing ~~such the~~ such the dealer's license plates may be lawfully operated upon the public highways of the state of North Dakota by ~~such the~~ such the dealer, the dealer's agents or representatives, during the year of ~~such the~~ such the registration. ~~Such~~ A dealer's license plates expire on December thirty-first of each year.

The term "trailer" as used in this chapter does not include those trailers exempt from registration in chapter 39-04.

Approved March 11, 1997  
Filed March 13, 1997

## CHAPTER 344

### HOUSE BILL NO. 1364

(Representatives Delmore, Mahoney, Maragos)  
(Senators Nething, St. Aubyn)

### PARK MODEL TRAILER FEES

AN ACT to create and enact a new section to chapter 39-04 of the North Dakota Century Code, relating to park model trailer fees; to amend and reenact subsection 2 of section 57-40.3-01 and subsection 2 of section 57-55-10 of the North Dakota Century Code, relating to the definition of motor vehicle and a mobile home tax exemption for a park model trailer; to provide an effective date; and to provide an expiration date.

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

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

Park model trailer fee. The owner of a park model trailer, as defined in subsection 2 of section 57-55-10, shall pay the department a fee of twenty dollars per calendar year to qualify for the exemption under section 57-55-10. The department shall issue a receipt for payment of the fee under this section but payment of the fee does not confer any rights to the owner of a park model trailer which are not otherwise provided by law. Fees collected under this section must be deposited in the highway tax distribution fund.

**SECTION 2. AMENDMENT.** Subsection 2 of section 57-40.3-01 of the North Dakota Century Code is amended and reenacted as follows:

2. "Motor vehicle" includes every vehicle ~~which~~ that is self-propelled and every vehicle ~~which~~ that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, every trailer, semitrailer, park model trailer as defined in subsection 2 of section 57-55-10, all-terrain vehicle, snowmobile, and travel trailer for which a certificate of title is required to be obtained ~~pursuant to the provisions of~~ under chapter 39-05, but not including house trailers, or mobile homes.

**SECTION 3. AMENDMENT.** Subsection 2 of section 57-55-10 of the North Dakota Century Code is amended and reenacted as follows:

2. The provisions of this chapter shall not apply to a mobile home ~~which~~ that:
  - a. Is used only for the temporary living quarters of the owner or other occupant while such person is engaged in recreational or vacation activities, provided that such unit ~~displays~~:
    - (1) Displays a current travel trailer license; or
    - (2) Is a park model trailer that is used only for seasonal or recreational living quarters, and which is located in a trailer park or campground and for which the owner has paid a

park model trailer fee under section 1 of this Act. For purposes of this paragraph, "park model" trailer means a recreational vehicle not exceeding forty feet [12.19 meters] in length which is primarily designed to provide temporary living quarters for recreation, camping, or seasonal use; is built on a single chassis; is mounted on wheels; has a gross trailer area not exceeding four hundred square feet [37.16 square meters] of enclosed living space in the setup mode; and is certified by the manufacturer as complying with American national standards institute standard A119.5.

- b. Qualifies as a farm residence as described by subsection 15 of section 57-02-08, provided such mobile home is permanently attached to the ground.
- c. Is permanently attached to a foundation and is assessed as real property, provided the owner of such mobile home also owns the land on which such mobile home is located.
- d. Is owned by a licensed mobile home dealer who holds such mobile home solely for the purpose of resale, and provided that such mobile home is not used as living quarters or as the place for the conducting of any business.

**SECTION 4. EFFECTIVE DATE - EXPIRATION DATE.** This Act is effective for the first two taxable years beginning after December 31, 1996, and is thereafter ineffective.

Approved April 3, 1997  
Filed April 3, 1997

## CHAPTER 345

### HOUSE BILL NO. 1083

(Representatives Mahoney, Carlisle, DeKrey)

### DRIVING WHILE INTOXICATED TESTING

AN ACT to amend and reenact subsection 8 of section 39-20-07 of the North Dakota Century Code, relating to the testing for driving while intoxicated.

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

<sup>9</sup> **SECTION 1. AMENDMENT.** Subsection 8 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. A certified copy of the analytical report of a blood, urine, or saliva analysis referred to in subsection 5 and which is issued by the state toxicologist must be accepted as prima facie evidence of the results of a chemical analysis performed under this chapter. The certified copy satisfies the directives of subsection 5.

Approved April 2, 1997  
Filed April 3, 1997

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<sup>9</sup> Section 39-20-07 was also amended by section 1 of House Bill No. 1084, chapter 346, and section 7 of House Bill No. 1111, chapter 334.

## CHAPTER 346

### HOUSE BILL NO. 1084

(Representatives Carlisle, DeKrey, Mahoney)  
(Senator Nalewaja)

## DRIVING WHILE INTOXICATED TESTIMONY

AN ACT to amend and reenact subsection 9 of section 39-20-07 of the North Dakota Century Code, relating to testimony on testing for driving while intoxicated.

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

<sup>10</sup> **SECTION 1. AMENDMENT.** Subsection 9 of section 39-20-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, the a defendant who has been found to be indigent by the court in any the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the forensic sciences division of the state department of health, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16.

Approved March 27, 1997  
Filed March 27, 1997

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<sup>10</sup> Section 39-20-07 was also amended by section 1 of House Bill No. 1083, chapter 345, and section 7 of House Bill No. 1111, chapter 334.

## CHAPTER 347

### SENATE BILL NO. 2160

(Senators Tallackson, Sand)  
(Representatives Gorder, Henegar, Monson, Olson)

## SNOWMOBILE OPERATION UNDER THE INFLUENCE

AN ACT to create and enact a new subsection to section 12-60-16.4, a new subsection to section 20.1-02-15.1, and chapter 39-24.1 of the North Dakota Century Code, relating to implied consent for snowmobile operators; to amend and reenact subdivision c of subsection 5 of section 39-24-09, and section 39-24-11 of the North Dakota Century Code, relating to driving a snowmobile while under the influence of an intoxicating liquor or drug; and to provide a penalty.

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

<sup>11</sup> **SECTION 1.** A new subsection to section 12-60-16.4 of the 1995 Supplement to the North Dakota Century Code is created and enacted as follows:

Infractions and misdemeanor violations of subdivision c of subsection 5 of section 39-24-09 and chapter 39-24.1.

<sup>12</sup> **SECTION 2. AMENDMENT.** Subdivision c of subsection 5 of section 39-24-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- c. While under the influence of intoxicating liquor or a ~~controlled substance~~ drug as defined in section 39-24.1-01, or a combination thereof.

**SECTION 3.** A new subsection to section 20.1-02-15.1 of the North Dakota Century Code is created and enacted as follows:

To enforce chapter 39-24.1.

<sup>13</sup> **SECTION 4. AMENDMENT.** Section 39-24-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-24-11. Penalties.** Any person who violates subdivision b, ~~e~~, or g of subsection 5 of section 39-24-09 is guilty of a class B misdemeanor. Any person who violates subdivision c of subsection 5 of section 39-24-09 is guilty of an

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<sup>11</sup> Section 12-60-16.4 was also amended by section 1 of Senate Bill No. 2085, chapter 117, and section 1 of House Bill No. 1167, chapter 428.

<sup>12</sup> Section 39-24-09 was also amended by section 2 of Senate Bill No. 2159, chapter 325.

<sup>13</sup> Section 39-24-11 was also amended by section 3 of Senate Bill No. 2159, chapter 325.



infraction or a class B misdemeanor as determined by section 39-24.1-07. Any person who violates any other provision of section 39-24-09 must be assessed a fee of twenty dollars. Any person, unless specifically exempted, who fails to register as required by section 39-24-02 must be assessed a fee of fifty dollars. If the person provides proof of registration since the violation, the fee may be reduced by one-half. Any person who violates any other provision of this chapter for which a specific penalty is not provided must be assessed a fee of ten dollars.

**SECTION 5.** Chapter 39-24.1 of the North Dakota Century Code is created and enacted as follows:

**39-24.1-01. Implied consent to determine alcoholic and drug content of blood.**

A person 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 alcoholic, other drug, or combination thereof, content of the blood. 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 alcoholic, or other drug, or combination thereof, content of the blood, breath, saliva, or urine, approved by the state toxicologist under this chapter; and "drug" means any drug or substance or combination of drugs or substances which renders a person 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, except persons mentioned in section 39-24.1-04, under arrest and informing that person that the person 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 charged that refusal of the person to submit to the chemical test determined appropriate will result in that person 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.

**39-24.1-02. Chemical test of operator in serious bodily injury or fatal accident.**

Notwithstanding section 39-24.1-01 or 39-24.1-06, when the operator of a snowmobile is involved in an accident resulting in the death or serious bodily injury, as defined in section 12.1-01-04, of another person, and there is probable cause to believe that the operator is in violation of subdivision c of subsection 5 of section 39-24-09, the operator may be compelled by a law enforcement officer to submit to a chemical test.

**39-24.1-03. Persons qualified to administer chemical test and opportunity for additional test.** Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a law enforcement officer may withdraw blood for the purpose of determining the alcoholic, drug, or combination thereof, content of the blood. This limitation does not apply to the taking of a breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of that person's own choosing 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 charged. The failure or inability to obtain an additional chemical test by a person does not preclude the admission of the chemical test taken at the direction of a law enforcement officer. Upon the request of the person who is tested, a copy of the operational checklist and test record of a breath sample test or analytical report of a blood, urine, or saliva sample test taken at the direction of the law enforcement officer must be made available to that person by the law enforcement agency that administered the chemical test.

**39-24.1-04. Consent of person incapable of refusal not withdrawn.** Any person who is dead, unconscious, or otherwise in a condition rendering that person incapable of refusal is deemed not to have withdrawn the consent provided by section 39-24.1-01 and the chemical test may be given.

**39-24.1-05. Action following chemical test result for a snowmobile operator.** If a person submits to a chemical test under section 39-24.1-01, 39-24.1-03, or 39-24.1-04 and the test shows that person to have the presence of a drug in that person's body or an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of the test within two hours after the operating of a snowmobile, the test is evidence of a per se violation of subdivision c of subsection 5 of section 39-24-09.

**39-24.1-06. Revocation of privilege to operate snowmobile upon refusal to submit to testing.**

1. If a person refuses to submit to testing under section 39-24.1-01, no chemical test may be given, but the law enforcement officer immediately shall issue to that person a summons or otherwise notify that person in writing to appear at the time and place specified in the summons or notice. The hearing and any appeal must be conducted as provided in section 39-06.1-03. If the person requests a hearing at a time and date other than as stated in the summons or notice, that person must post an appearance bond as required by subsection 2 of section 39-06.1-03. Upon establishing at the hearing by a preponderance of the evidence that the officer had probable cause to believe the person had been operating a snowmobile while in violation of subdivision c of subsection 5 of section 39-24-09 or had observed that the snowmobile was operated in a negligent, reckless, or hazardous manner as defined by the director by rule, that the person was lawfully arrested if applicable, and that the person had refused to submit to the chemical test under section 39-24.1-01, the court shall prohibit the person from operating a snowmobile on all public land or private land with public access for the appropriate period under this section, and shall impose a noncriminal statutory fee of five hundred dollars. A violation of this section must be reported to the parks and recreation department. The department shall keep a record of all reported violations. The period for which a person is prohibited from operating a snowmobile under this section is:
  - a. One year if the person's record shows that within the five years preceding the most recent refusal under this section, the person has not been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.
  - b. Two years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has

once been prohibited from operating a snowmobile for a violation of this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09.

- c. Three years if the person's record shows that within the five years preceding the most recent refusal under this section, the person has twice been prohibited from operating a snowmobile under this chapter or for a violation of subdivision c of subsection 5 of section 39-24-09 and the prohibitions resulted from at least two separate arrests.
2. A person may not be prohibited from operating a snowmobile under this section if:
- a. The person files an affidavit with the court before the time set for hearing in the summons or notice, or, with the permission of the court, within five days after the hearing. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense;
    - (2) Agrees that the person may not operate a snowmobile for the appropriate period defined in section 39-24.1-07;
    - (3) Acknowledges the right to a section 39-06.1-03 administrative hearing and section 39-06.1-03 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person may not operate a snowmobile for the appropriate period as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within thirty days after the date of the offense, or the court does not accept the guilty plea, or the guilty plea is withdrawn; and
  - b. The person pleads guilty to violating subdivision c of subsection 5 of section 39-24-09 within thirty days after the date of the offense.

**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. 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 two violations of subdivision c of subsection 5 of section 39-24-09 or the person has 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.

**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 while operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof, evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having a drug in that person'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 of blood or grams of alcohol per two hundred ten liters of alveolar air or grams of alcohol per sixty-seven cubic centimeters 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 state toxicologist, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory devices and methods of chemical 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 requested to take the chemical test.
4. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, required to perform the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written

record of the approval with the director and the clerk of the district court in each county and shall include in the record:

- a. An annual register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
- b. An annual register of currently qualified and certified operators of the devices, stating the date of certification and its expiration.
- c. The operational checklist and forms prescribing the methods currently approved by the state toxicologist in using the devices during the administration of the tests.

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

5. Copies of the records referred to in subsections 3 and 4, certified by the clerk of the district court, 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, urine, or saliva test issued by the state toxicologist 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 who conducted the chemical test referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act.
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.

**39-24.1-09. Proof of refusal admissible in any action or proceeding.** If the person under arrest refuses to submit to the chemical test, proof of refusal is admissible in any action or proceeding arising out of acts alleged to have been committed while the person was operating a snowmobile while under the influence of intoxicating liquor, drugs, or a combination thereof.

**39-24.1-10. Effect of evidence of chemical test.** This chapter does not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor, drugs, or a combination thereof, but, if the chemical test results show a drug or an alcohol concentration of at least ten one-hundredths of one percent, the purpose of the evidence must be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

**39-24.1-11. Liability.** Any licensed physician, nurse, technician, or an employee of a hospital who draws blood from any person pursuant to a request of

any arresting officer is not liable in any civil action for damages arising out of the act except for gross negligence.

**39-24.1-12. Operation of snowmobile during period of prohibition - Penalty.**

Any person who operates a snowmobile on any public land or private land with public access during the period the person is prohibited from operating a snowmobile under this chapter is guilty of a class A misdemeanor.

**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 April 9, 1997  
Filed April 10, 1997

## CHAPTER 348

### SENATE BILL NO. 2264 (Senators Mutch, Thompson)

## INTRASTATE COMMERCIAL DRIVER HOURS OF SERVICE

AN ACT to provide for exemptions from hours of service provisions for intrastate commercial drivers; and to declare an emergency.

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

**SECTION 1. Definition of intrastate driver.** As used in this Act, "intrastate driver" means a driver who will be operating a commercial motor vehicle within this state for a seven-consecutive-day period.

### **SECTION 2. Intrastate exemptions from federal hours of service provisions.**

1. The following intrastate drivers are not subject to hours of service limitations:
  - a. A driver of an authorized emergency vehicle.
  - b. A driver who operates a motor vehicle that has a manufacturer's gross vehicle weight rating equal to or less than twenty-six thousand pounds [11793.40 kilograms] and that is not transporting hazardous materials.
  - 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 hours following eight consecutive hours off duty.
  - b. For any period after having been on duty more than fifteen hours.
  - c. After having been on duty for seventy hours in any period of seven consecutive days unless operating within an area having a one hundred fifty air mile radius from the driver's home post office or a one hundred fifty air mile radius from the official worksite of the vehicle if:
    - (1) The driver returns to the work reporting location and is released within twelve consecutive hours.
    - (2) At least eight consecutive hours off duty separate each twelve hours on duty.

- (3) The driver does not exceed twelve hours maximum driving time following eight consecutive hours off duty.
    - (4) The person that employs the driver maintains and retains for a period of six months accurate time records showing the time the driver reports for duty each day, the total number of hours the driver is on duty each day, and the time the driver is released from duty each day.
  3. Following twenty-four consecutive hours off, an intrastate driver begins a new seven-consecutive-day period and on-duty time is reset to zero.
  4. Hours of service limitations do not apply to an intrastate driver when transporting property or passengers during a declared emergency. 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.
  5.
    - a. An intrastate driver, except for a driver salesperson, is released from duty each day, total hours on duty each day, and total time for the preceding seven days recordkeeping requirements if:
      - (1) The driver operates within a one hundred fifty air mile radius of the normal work reporting location, returns to the work reporting location, and is released from work within twelve consecutive hours;
      - (2) The driver has eight consecutive hours off duty separating each twelve hours on duty;
      - (3) The driver does not exceed the twelve hours maximum driving time following eight consecutive hours off duty; and
      - (4) The motor carrier maintains accurate and true records of the time the driver reports for duty each day.
    - b. An intrastate driver under subdivision a shall comply with the seventy hour per seven day limit and shall keep track of the total time for the preceding seven days.

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

Approved March 25, 1997  
Filed March 26, 1997



## CHAPTER 349

### HOUSE BILL NO. 1103

(Representative Sveen)

(At the request of the Department of Transportation)

## DRIVER AND MOTOR VEHICLE RECORD PRIVACY

AN ACT to provide for the privacy of driver and motor vehicle records; to amend and reenact section 39-02-05 of the North Dakota Century Code, relating to records of the department; to provide a penalty; and to provide an expiration date.

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

#### SECTION 1. Definitions. As used in this Act:

1. "Department" means the department of transportation, or an authorized agent or contractor of the department responsible for compiling and maintaining motor vehicle records.
2. "Disclose" means to engage in any practice or conduct to make available and make known personal information contained in a motor vehicle record about a person to any other person by any means of communication.
3. "Individual record" means a motor vehicle record containing personal information about a designated person who is the subject of the record as identified in a request.
4. "Motor vehicle record" means any record that pertains to a motor vehicle operator's license or permit, motor vehicle registration, motor vehicle title, or identification document issued by the department, or other state or local agency authorized to issue any of such forms of credentials. A record includes all books, papers, photographs, photostats, cards, films, tapes, recordings, electronic data, printouts or other documentary materials regardless of physical form or characteristics.
5. "Person" does not include an agency of this state.
6. "Personal information" means information that identifies a person, including an individual's photograph or computerized image, social security number, driver identification number, name, address, telephone number, and medical or disability information. The term does not include the five-digit zip code of an address, information on vehicular accidents, driving or equipment-related violations, and operator's license or registration status.

**SECTION 2. Disclosure and use of personal information from department records prohibited.** Notwithstanding any other provision of law, except as provided in sections 3, 4, and 5 of this Act, the department may not disclose personal information about any person obtained by the department in connection with a motor vehicle record.

**SECTION 3. Required disclosures.** Personal information referred to in section 2 of this Act must be disclosed for use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles and dealers by motor vehicle manufacturers; and removal of nonowner records from the original owner records of motor vehicle manufacturers in accordance with federal law.

**SECTION 4. Disclosure with consent.** Personal information referred to in section 2 of this Act may be disclosed to any requester, if the requester demonstrates in the form and manner prescribed by the department that the requester has obtained the written consent of the person who is the subject of the information.

**SECTION 5. Permitted disclosures.** The department may disclose personal information referred to in section 2 of this Act to any person, on proof of the identity of the person requesting a record and representation by the requester that the use of the personal information will be strictly limited to one or more of the following:

1. For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person acting on behalf of a government agency in carrying out its functions.
2. For use in connection with matters of motor vehicles or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts, and dealers; motor vehicle market research activities, including survey research; and removal of nonowner records from the original owner records of motor vehicle manufacturers.
3. For use in the normal course of business by a legitimate business or its agents, employees, or contractors:
  - a. To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and
  - b. If the information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual.
4. For use in connection with any proceeding in any court or government agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of any court.
5. For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact individuals.
6. For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating, or underwriting.

7. For use in providing notice to the owner or lienholder of a towed or impounded vehicle.
8. For use by any licensed private investigative agency or licensed security service for any purpose permitted under this section.
9. For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license which is required under the Commercial Motor Vehicle Safety Act of 1986 [title XII of Pub. L. 99-570].
10. For use in connection with the operation of private toll transportation facilities.
11. For any use specifically authorized by law that is related to the operation of a motor vehicle or public safety.
12. For any other use in response to requests for individual motor vehicle records if the department has provided in a clear and conspicuous manner on forms for issuance or renewal of operator's permits, titles, registrations, or identification cards, notice that personal information collected by the department may be disclosed to any person, and the department has provided in a clear and conspicuous manner on the forms an opportunity to prohibit disclosure.
13. For bulk distribution for surveys, marketing, or solicitations if the motor vehicle department has implemented methods and procedures to ensure that:
  - a. Individuals are provided an opportunity, in a clear and conspicuous manner, to prohibit those uses; and
  - b. The information disclosed may not be used for surveys, marketing, or solicitations directed at the individuals choosing to prohibit those uses.

**SECTION 6. Fees.** Disclosure of personal information required or permitted under sections 3, 4, and 5 of this Act is subject to payment by the requesting person to the department of all fees for the information required by law, or the terms of any contract with the requesting person, on the terms for payment as may be required or agreed.

**SECTION 7. Additional conditions.** Before the disclosure of personal information under sections 3, 4, and 5 of this Act, the department may require reasonable assurance concerning the identity of the requesting person, the use to be only as authorized, and the consent of the person who is the subject of the information to be obtained. These conditions may include the making and filing of a written application in a form and containing information and certification requirements as the department may prescribe.

**SECTION 8. Resale or redisclosure.**

1. An authorized recipient of personal information may resell or redisclose the information for any use permitted under section 5.

2. The department shall require any authorized recipient who resells or rediscloses personal information to maintain for a period of not less than five years records as to the person receiving the information and the permitted use for which it was obtained, and to make these records available for inspection by the department, upon request.

**SECTION 9. Regulations and waiver procedure.** Upon receiving a request for personal information that is not subject to disclosure in accordance with the exception provisions of sections 3, 4, and 5, the department may mail a copy of the request to each individual who is the subject of the information, informing the individual of the request, together with a statement to the effect that disclosure is prohibited and will not be made unless the individual affirmatively elects to waive the individual's rights to privacy under sections 1 through 10 of this Act.

**SECTION 10. Penalty for false representation.** Any person requesting the disclosure of personal information from department records who misrepresents that person's identity or makes a false statement to the department on any application required to be submitted pursuant to sections 1 through 10 of this Act is guilty of a class A misdemeanor.

**SECTION 11. AMENDMENT.** Section 39-02-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**39-02-05. Records of the department open to public inspection.** ~~All~~ Except as provided by sections 1 through 10 of this Act, all registration and license records in the office of the department must be public records and must be open to inspection by the public during business hours. The director shall charge a uniform fee, not to exceed three dollars, for each item of information furnished to any person concerning a specific motor vehicle. However, such charges may not be assessed to a person requesting information concerning a motor vehicle of which he is the owner, nor may such charges apply to law enforcement officials requesting motor vehicle information in their official capacity. All fees received under the provisions of this section must be credited to the motor vehicle registration fund.

**SECTION 12. EXPIRATION DATE.** This Act becomes ineffective on the date the attorney general certifies to the legislative council that the Federal Driver's Privacy Protection Act of 1994 [Pub. L. 103-322; 108 Stat. 2099; 18 USC 2721] has been declared unconstitutional by the United States Supreme Court or is otherwise void.

Approved April 8, 1997  
Filed April 8, 1997