

## HOUSE BILL NO. 1452

Introduced by

Representatives Zaiser, Galvin, Grande, Gulleason, S. Kelsh, Sitte

1 A BILL for an Act to amend and reenact sections 39-08-01 and 39-20-04 of the North Dakota  
2 Century Code, relating to the consequences for driving while under the influence.

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

4 **SECTION 1. AMENDMENT.** Section 39-08-01 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **39-08-01. (Effective through July 31, 2003) Persons under the influence of**  
7 **intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

- 8 1. A person may not drive or be in actual physical control of any vehicle upon a  
9 highway or upon public or private areas to which the public has a right of access  
10 for vehicular use in this state if any of the following apply:
- 11 a. That person has an alcohol concentration of at least ten one-hundredths of  
12 one percent by weight at the time of the performance of a chemical test within  
13 two hours after the driving or being in actual physical control of a vehicle.
  - 14 b. That person is under the influence of intoxicating liquor.
  - 15 c. That person is under the influence of any drug or substance or combination of  
16 drugs or substances to a degree which renders that person incapable of  
17 safely driving.
  - 18 d. That person is under the combined influence of alcohol and any other drugs  
19 or substances to a degree which renders that person incapable of safely  
20 driving.

21 The fact that any person charged with violating this section is or has been legally  
22 entitled to use alcohol or other drugs or substances is not a defense against any  
23 charge for violating this section, unless a drug which predominately caused

1 impairment was used only as directed or cautioned by a practitioner who legally  
2 prescribed or dispensed the drug to that person.

3 2. A person violating this section or equivalent ordinance is guilty of a class B  
4 misdemeanor for the first or second offense in a five-year period, of a class A  
5 misdemeanor for a third offense in a five-year period, of a class A misdemeanor for  
6 the fourth offense in a seven-year period, and of a class C felony for a fifth or  
7 subsequent offense in a seven-year period. The minimum penalty for violating this  
8 section is as provided in subsection 4. The court shall take judicial notice of the  
9 fact that an offense would be a subsequent offense if indicated by the records of  
10 the director or may make a subsequent offense finding based on other evidence.

11 3. Upon conviction, the court may order the motor vehicle number plates of the motor  
12 vehicle owned and operated by the offender at the time of the offense to be  
13 impounded for the duration of the period of suspension or revocation of the  
14 offender's driving privilege by the licensing authority. The impounded number  
15 plates must be sent to the director who must retain them for the period of  
16 suspension or revocation, subject to their disposition by the court.

17 4. A person convicted of violating this section, or an equivalent ordinance, must be  
18 sentenced in accordance with this subsection. For purposes of this subsection,  
19 unless the context otherwise requires, "drug court program" means a district  
20 court-supervised treatment program approved by the supreme court which  
21 combines judicial supervision with alcohol and drug testing and chemical addiction  
22 treatment in a licensed treatment program. The supreme court may adopt rules,  
23 including rules of procedure, for drug courts and the drug court program.

24 a. For a first offense, the sentence must include both a fine of at least two  
25 hundred fifty dollars and an order for addiction evaluation by an appropriate  
26 licensed addiction treatment program.

27 b. For a second offense within five years, the sentence must include at least five  
28 days' imprisonment or placement in a minimum security facility, of which  
29 forty-eight hours must be served consecutively, or thirty days' community  
30 service; a fine of at least five hundred dollars; and an order for addiction  
31 evaluation by an appropriate licensed addiction treatment program.

- 1           c. For a third offense within five years, the sentence must include at least sixty  
2           days' imprisonment or placement in a minimum security facility, of which  
3           forty-eight hours must be served consecutively; a fine of one thousand dollars;  
4           and an order for addiction evaluation by an appropriate licensed addiction  
5           treatment program.
- 6           d. For a fourth or subsequent offense within seven years, the sentence must  
7           include one hundred eighty days' imprisonment or placement in a minimum  
8           security facility, of which forty-eight hours must be served consecutively; a  
9           fine of one thousand dollars; and an order for addiction evaluation by an  
10          appropriate licensed treatment program.
- 11          e. The execution or imposition of sentence under this section may not be  
12          suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an  
13          offense subject to subdivision a or b. If the offense is subject to subdivision c  
14          or d, the district court may suspend a sentence, except for ten days'  
15          imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition  
16          that the defendant first undergo and complete an evaluation for alcohol and  
17          substance abuse treatment and rehabilitation. If the defendant is found to be  
18          in need of alcohol and substance abuse treatment and rehabilitation, the  
19          district court may order the defendant placed under the supervision and  
20          management of the department of corrections and rehabilitation and is subject  
21          to the conditions of probation under section 12.1-32-07. The district court  
22          shall require the defendant to complete alcohol and substance abuse  
23          treatment and rehabilitation under the direction of the drug court program as a  
24          condition of probation in accordance with rules adopted by the supreme court.  
25          If the district court finds that a defendant has failed to undergo an evaluation  
26          or complete treatment or has violated any condition of probation, the district  
27          court shall revoke the defendant's probation and shall sentence the defendant  
28          in accordance with this subsection.
- 29          f. For purposes of this section, conviction of an offense under a law or  
30          ordinance of another state which is equivalent to this section must be

considered a prior offense if such offense was committed within the time limitations specified in this subsection.

- g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section.

5. As used in subdivision b of subsection 4, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

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

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

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

6 2. A person violating this section or equivalent ordinance is guilty of a class B  
7 misdemeanor for the first or second offense in a five-year period; unless for one of  
8 the violations the person had a blood alcohol content of over fifteen  
9 one-hundredths of one percent weight, then the person is guilty of a class A  
10 misdemeanor; of a class A misdemeanor for a third offense in a five-year period;  
11 unless for at least two of the violations the person had a blood alcohol content of  
12 over fifteen one-hundredths of one percent by weight, then the person is guilty of a  
13 class C felony; of a class A misdemeanor for the fourth offense in a seven-year  
14 period; unless for at least two of the violations the person had a blood alcohol  
15 content of over fifteen one-hundredths of one percent by weight, then the person is  
16 guilty of a class C felony, or unless for at least three of the violations the person  
17 had a blood alcohol content of over fifteen one-hundredths of one percent by  
18 weight, then the person is guilty of a class B felony; and of a class C felony for a  
19 fifth or subsequent offense in a seven-year period unless for at least three of the  
20 violations the person had a blood alcohol content of over fifteen one-hundredths of  
21 one percent by weight, then the penalty is a class B felony. The minimum penalty  
22 for violating this section is as provided in subsection 4. The court shall take judicial  
23 notice of the fact that an offense would be a subsequent offense if indicated by the  
24 records of the director or may make a subsequent offense finding based on other  
25 evidence.

26 3. Upon conviction, the court may order the motor vehicle number plates of the motor  
27 vehicle owned and operated by the offender at the time of the offense to be  
28 impounded for the duration of the period of suspension or revocation of the  
29 offender's driving privilege by the licensing authority. The court shall order the  
30 plates impounded for two years for a violation of this section if the offender had a  
31 blood alcohol content of twenty one-hundredths of one percent by weight. 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. However, if the offense was for a violation in which the person had a blood alcohol content of over fifteen one-hundredths of one percent by weight, the sentence must include at least a fine of one thousand dollars, ten days' imprisonment or placement in a minimum security facility or ninety days' house arrest, and an order for addiction evaluation by an appropriate licensed addiction treatment program.

b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program. However, if the two offenses were for violations in which the person had a blood alcohol content of over fifteen one-hundredths of one percent by weight, the sentence must include a fine of two thousand dollars, thirty days' imprisonment or placement in a minimum security facility of which forty-eight hours must be served consecutively or one hundred eighty days' house arrest, and an order for addiction evaluation by an appropriate licensed addiction treatment program.

c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program. However, if two of the three offenses were for violations in which the person had a blood alcohol content of over fifteen one-hundredths of one percent by weight, the sentence must include at least

1           a fine of four thousand dollars, sixty days' imprisonment or placement in a  
2           minimum security facility of which forty-eight hours must be served  
3           consecutively or two years' house arrest, and an order for addiction evaluation  
4           by an appropriate licensed addiction treatment program or one year's house  
5           arrest, and an order for addiction evaluation by an appropriate licensed  
6           addiction treatment program. If the three offenses were for violations in which  
7           the person had a blood alcohol content over fifteen one-hundredths of one  
8           percent by weight, the sentence must include at least a fine of five thousand  
9           dollars, one hundred eighty days' imprisonment or placement in a minimum  
10          security facility of which forty-eight hours must be served consecutively or two  
11          years' house arrest, and an order for addiction evaluation by an appropriate  
12          licensed addiction treatment program.

13          d. For a fourth or subsequent offense within seven years, the sentence must  
14          include one hundred eighty days' imprisonment or placement in a minimum  
15          security facility, of which forty-eight hours must be served consecutively and a  
16          fine of one thousand dollars. However, if three of the offenses were for  
17          violations in which the person had a blood alcohol content of over fifteen  
18          one-hundredths of one percent by weight, the sentence must include at least  
19          a fine of five thousand dollars, two hundred and forty days' imprisonment or  
20          placement in a minimum security facility, or two years' house arrest of which  
21          forty-eight hours must be served consecutively.

22          e. The execution or imposition of sentence under this section may not be  
23          suspended or deferred under subsection 3 or 4 of section 12.1-32-02.

24          f. For purposes of this section, conviction of an offense under a law or  
25          ordinance of another state which is equivalent to this section must be  
26          considered a prior offense if such offense was committed within the time  
27          limitations specified in this subsection.

28          g. If the penalty mandated by this section includes imprisonment or placement  
29          upon conviction of a violation of this section or equivalent ordinance, and if an  
30          addiction evaluation has indicated that the defendant needs treatment, the  
31          court may order the defendant to undergo treatment at an appropriate

1 licensed addiction treatment program and the time spent by the defendant in  
2 the treatment must be credited as a portion of a sentence of imprisonment or  
3 placement under this section.

4 5. ~~As used in subdivision b of subsection 4, the term "imprisonment" includes house~~  
5 ~~arrest.~~ As a condition of house arrest, a defendant may not consume alcoholic  
6 beverages. The house arrest must include a program of electronic home detention  
7 in which the defendant is tested at least twice daily for the consumption of alcohol.  
8 The defendant shall defray all costs associated with the electronic home detention.  
9 This subsection does not apply to individuals committed to or under the supervision  
10 and management of the department of corrections and rehabilitation.

11 6. For a violation under this section in which a person had a blood alcohol content in  
12 excess of twenty one-hundredths of one percent by weight, the penalties in this  
13 section apply except the crime is a class C felony and the fine must be at least  
14 eight thousand dollars plus four thousand dollars for each additional violation in  
15 which the person had a blood alcohol content in excess of twenty one-hundredths  
16 of one percent by weight.

17 7. For a person who violated this section with a blood alcohol content over fifteen  
18 one-hundredths of one percent by weight, a sentence must include at least six  
19 months' probation and an order to attend an alcohol treatment program for six  
20 months. For a person who violated this section at least twice with a blood alcohol  
21 content over fifteen one-hundredths of one percent by weight, the sentence must  
22 include at least one year's probation and an order to attend an alcohol treatment  
23 program of one year. For a person who has violated this section with a blood  
24 alcohol content in excess of twenty one-hundredths of one percent by weight, the  
25 sentence must include eighteen months of probation and an order to attend an  
26 alcohol treatment program for eighteen months.

27 8. A state's attorney may not plea bargain a case charged under this section to a  
28 penalty lower than included in this section.

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



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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's

license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The fee for refusal to submit to testing is one hundred dollars. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- b. Two years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
- c. Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests.

2. A person's driving privileges are not subject to revocation under this section if all of the following criteria are met:

- a. No administrative hearing is held under section 39-20-05;
- b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
  - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
  - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;

- 1                   (3) Acknowledges the right to a section 39-20-05 administrative hearing  
2   and section 39-20-06 judicial review and voluntarily and knowingly  
3   waives these rights; and
- 4                   (4) Agrees that the person's driving privileges must be revoked as provided  
5   under this section without an administrative hearing or judicial review, if  
6   the person does not plead guilty within twenty-five days after the  
7   temporary operator's permit is issued, or the court does not accept the  
8   guilty plea, or the guilty plea is withdrawn;
- 9                   c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance  
10   within twenty-five days after the temporary operator's permit is issued;
- 11                   d. The court accepts the person's guilty plea and a notice of that fact is mailed to  
12   the director within twenty-five days after the temporary operator's permit is  
13   issued; and
- 14                   e. A copy of the final order or judgment of conviction evidencing the acceptance  
15   of the person's guilty plea is received by the director prior to the return or  
16   reinstatement of the person's driving privileges.
- 17                   3. The court must mail a copy of an order granting a withdrawal of a guilty plea to  
18   violating section 39-08-01, or equivalent ordinance, to the director within ten days  
19   after it is ordered. Upon receipt of the order, the director shall immediately revoke  
20   the person's driving privileges as provided under this section without providing an  
21   administrative hearing.