

**FIRST ENGROSSMENT
with Senate Amendments**

Fifty-eighth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1439

Introduced by

Representative Weiler

Senator Nething

1 A BILL for an Act to amend and reenact subsection 7 of section 39-06.1-10, sections 39-08-01
2 and 39-20-04, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code,
3 relating to the consequences for driving while under the influence; and to provide a penalty.

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

5 **SECTION 1. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 7. The period of suspension imposed for a violation of section 39-08-01 or equivalent
8 ordinance is:
- 9 a. Ninety-one days if the operator's record shows the person has not violated
10 section 39-08-01 or equivalent ordinance within the five years preceding the
11 last violation and the violation was for an alcohol concentration under sixteen
12 one-hundredths of one percent by weight.
- 13 b. One hundred eighty days if the operator's record shows the person has not
14 violated section 39-08-01 or equivalent ordinance within five years preceding
15 the last violation and the last violation was for an alcohol concentration of at
16 least sixteen one-hundredths of one percent by weight.
- 17 c. Three hundred sixty-five days if the operator's record shows the person has
18 once violated section 39-08-01 or equivalent ordinance within the five years
19 preceding the last violation and the last violation is for an alcohol
20 concentration of under sixteen one-hundredths of one percent by weight.
- 21 ~~e.~~ d. Two years if the operator's record shows the person has at least ~~twice~~ once
22 violated section 39-08-01 or equivalent ordinance within the five years
23 preceding the last violation and the last violation was for an alcohol
24 concentration of at least sixteen one-hundredths of one percent by weight or if

1 the operator's record shows the person has at least twice violated section
2 39-08-01 or equivalent ordinance within the five years preceding the last
3 violation and the last violation was for an alcohol concentration under sixteen
4 one-hundredths of one percent by weight.

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

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

11 **39-08-01. (Effective through July 31, 2003) Persons under the influence of**
12 **intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

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

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

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

forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program.
- e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the defendant is found to be in need of alcohol and substance abuse treatment and rehabilitation, the district court may order the defendant placed under the supervision and management of the department of corrections and rehabilitation and is subject to the conditions of probation under section 12.1-32-07. The district court shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. If the district court finds that a defendant has failed to undergo an evaluation or complete treatment or has violated any condition of probation, the district court shall revoke the defendant's probation and shall sentence the defendant in accordance with this subsection.
- f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this subsection.

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

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

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

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

30 The fact that any person charged with violating this section is or has been legally
31 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 if the alcohol concentration is under sixteen one-hundredths of one percent by weight for the first or second offense in a five-year period, of a class A misdemeanor if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for the first or the second offense within a five-year period or the alcohol concentration is under sixteen one-hundredths of one percent by weight for a third or subsequent offense in a five-year period, ~~of a class A misdemeanor for the fourth offense in a seven-year period,~~ and of a class C felony if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for a fifth third or subsequent offense in a ~~seven-year~~ five-year period. The minimum penalty for violating this section is as provided in subsection 4. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence. A person convicted of violating subdivision b of subsection 1 is conclusively presumed to have an alcohol concentration of at least sixteen one-hundredths of one percent by weight.
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~~ if the alcohol concentration was under sixteen one-hundredths of one percent by weight a fine of at least two hundred fifty dollars, if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least five hundred

- 1 dollars and in all cases an order for addiction evaluation by an appropriate
2 licensed addiction treatment program.
- 3 b. For a second offense within five years, the sentence must include at least five
4 days' imprisonment or placement in a minimum security facility, of which
5 forty-eight hours must be served consecutively, or thirty days' community
6 service; if the alcohol concentration was and under sixteen one-hundredths of
7 one percent by weight, a fine of at least five hundred dollars or if the alcohol
8 concentration was at least sixteen one-hundredths of one percent by weight a
9 fine of at least one thousand dollars; and an order for addiction evaluation by
10 an appropriate licensed addiction treatment program.
- 11 c. For a third offense within five years, the sentence must include at least sixty
12 days' imprisonment or placement in a minimum security facility, of which
13 forty-eight hours must be served consecutively; if the alcohol concentration
14 was under sixteen one-hundredths of one percent by weight, a fine of at least
15 one thousand dollars or if the alcohol concentration was at least sixteen
16 one-hundredths of one percent by weight a fine of at least two thousand
17 dollars; and an order for addiction evaluation by an appropriate licensed
18 addiction treatment program.
- 19 d. For a fourth or subsequent offense within seven years, the sentence must
20 include one hundred eighty days' imprisonment or placement in a minimum
21 security facility, of which forty-eight hours must be served consecutively and a
22 fine of ~~one~~ two thousand dollars.
- 23 e. The execution or imposition of sentence under this section may not be
24 suspended or deferred under subsection 3 or 4 of section 12.1-32-02.
- 25 f. For purposes of this section, conviction of an offense under a law or
26 ordinance of another state which is equivalent to this section must be
27 considered a prior offense if such offense was committed within the time
28 limitations specified in this subsection.
- 29 g. If the penalty mandated by this section includes imprisonment or placement
30 upon conviction of a violation of this section or equivalent ordinance, and if an
31 addiction evaluation has indicated that the defendant needs treatment, the

1 court may order the defendant to undergo treatment at an appropriate
2 licensed addiction treatment program and the time spent by the defendant in
3 the treatment must be credited as a portion of a sentence of imprisonment or
4 placement under this section.

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

12 **SECTION 3. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
15 **testing.**

- 16 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none
17 may be given, but the law enforcement officer shall immediately take possession of
18 the person's operator's license if it is then available and shall immediately issue to
19 that person a temporary operator's permit, if the person then has valid operating
20 privileges, extending driving privileges for the next twenty-five days or until earlier
21 terminated by a decision of a hearing officer under section 39-20-05. The law
22 enforcement officer shall sign and note the date on the temporary operator's
23 permit. The temporary operator's permit serves as the director's official notification
24 to the person of the director's intent to revoke driving privileges in this state and of
25 the hearing procedures under this chapter. The director, upon the receipt of that
26 person's operator's license and a certified written report of the law enforcement
27 officer in the form required by the director, forwarded by the officer within five days
28 after issuing the temporary operator's permit, showing that the officer had
29 reasonable grounds to believe the person had been driving or was in actual
30 physical control of a motor vehicle while in violation of section 39-08-01 or
31 equivalent ordinance or, for purposes of section 39-20-14, had reason to believe

1 that the person committed a moving traffic violation or was involved in a traffic
2 accident as a driver, and in conjunction with the violation or accident the officer
3 has, through the officer's observations, formulated an opinion that the person's
4 body contains alcohol, that the person was lawfully arrested if applicable, and that
5 the person had refused to submit to the test or tests under section 39-20-01 or
6 39-20-14, shall revoke that person's license or permit to drive and any nonresident
7 operating privilege for the appropriate period under this section, or if the person is
8 a resident without a license or a permit to operate a motor vehicle in this state, the
9 director shall deny to the person the issuance of a license or permit for the
10 appropriate period under this section after the date of the alleged violation, subject
11 to the opportunity for a prerevocation hearing and postrevocation review as
12 provided in this chapter. In the revocation of the person's operator's license the
13 director shall give credit for time in which the person was without an operator's
14 license after the day of the person's refusal to submit to the test except that the
15 director may not give credit for time in which the person retained driving privileges
16 through a temporary operator's permit issued under this section or section
17 39-20-03.2. The period of revocation or denial of issuance of a license or permit
18 under this section is:

- 19 a. One year if the person's driving record shows that within the five years
20 preceding the most recent violation of this section, the person's operator's
21 license has not previously been suspended, revoked, or issuance denied for a
22 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 23 b. ~~Two~~ Three years if the person's driving record shows that within the five years
24 preceding the most recent violation of this section, the person's operator's
25 license has been once previously suspended, revoked, or issuance denied for
26 a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 27 c. ~~Three~~ Five years if the person's driving record shows that within the five years
28 preceding the most recent violation of this section, the person's operator's
29 license has at least twice previously been suspended, revoked, or issuance
30 denied under this chapter, or for a violation of section 39-08-01 or equivalent

ordinance, or any combination ~~thereof of the same~~, and the suspensions,
revocations, or denials resulted from at least two separate arrests.

2. A person's driving privileges are not subject to revocation under ~~this section~~
subdivision a of subsection 1 if all of the following criteria are met:

- a. ~~No~~ An administrative hearing is not held under section 39-20-05;
- b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
 - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance with an alcohol concentration under sixteen one-hundredths of one percent by weight within twenty-five days after the temporary operator's permit is issued;
 - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
 - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
 - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
- c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance with an alcohol concentration under sixteen one-hundredths of one percent by weight within twenty-five days after the temporary operator's permit is issued;
- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges.

- 1 3. The court must mail a copy of an order granting a withdrawal of a guilty plea to
2 violating section 39-08-01, or equivalent ordinance, to the director within ten days
3 after it is ordered. Upon receipt of the order, the director shall immediately revoke
4 the person's driving privileges as provided under this section without providing an
5 administrative hearing.

6 **SECTION 4. AMENDMENT.** Subsection 1 of section 39-20-04.1 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. After the receipt of a person's operator's license, if taken under section 39-20-03.1
9 or 39-20-03.2, and the certified report of a law enforcement officer and if no written
10 request for hearing has been received from the arrested person under section
11 39-20-05, or if that hearing is requested and the findings, conclusion, and decision
12 from the hearing confirm that the law enforcement officer had reasonable grounds
13 to arrest the person and test results show that the arrested person was driving or
14 in physical control of a vehicle while having an alcohol concentration of at least ten
15 one-hundredths of one percent by weight or, with respect to a person under
16 twenty-one years of age, an alcohol concentration of at least two one-hundredths
17 of one percent by weight at the time of the performance of a test within two hours
18 after driving or being in physical control of a motor vehicle, the director shall
19 suspend the person's operator's license as follows:

- 20 a. For ninety-one days if the person's driving record shows that, within the five
21 years preceding the date of the arrest, the person has not previously violated
22 section 39-08-01 or equivalent ordinance or the person's operator's license
23 has not previously been suspended or revoked under this chapter and the
24 violation was for an alcohol concentration under sixteen one-hundredths of
25 one percent by weight.
- 26 b. For one hundred eighty days if the operator's record shows the person has
27 not violated section 39-08-01 or equivalent ordinance within five years
28 preceding the last violation and the last violation was for an alcohol
29 concentration of at least sixteen one-hundredths of one percent by weight.
- 30 c. For three hundred sixty-five days if the person's driving record shows that,
31 within the five years preceding the date of the arrest, the person has once

1 previously violated section 39-08-01 or equivalent ordinance or the person's
2 operator's license has once previously been suspended or revoked under this
3 chapter with the last violation or suspension for an alcohol concentration
4 under sixteen one-hundredths of one percent by weight.

5 e- d. For two years if the person's driving record shows that within the five years
6 preceding the date of the arrest, the person's operator's license has ~~at least~~
7 ~~twice previously~~ once been suspended, revoked, or issuance denied under
8 this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or
9 any combination thereof, and the suspensions, revocations, or denials
10 resulted from at least two separate arrests with the last violation or
11 suspension for an alcohol concentration at least sixteen one-hundredths of
12 one percent by weight or if the person's driving record shows that within the
13 five years preceding the date of arrest, the person's operator's license has at
14 least twice previously been suspended, revoked, or issuance denied under
15 this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or
16 any combination thereof, and the suspensions, revocations, or denials
17 resulted from at least two separate arrests with the last violation or
18 suspension for an alcohol concentration of under sixteen one-hundredths of
19 one percent by weight.

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