

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 create and enact a new paragraph to subdivision b of subsection 3 of
2 section 39-06.1-10; to amend and reenact subsection 7 of section 39-06.1-10, sections
3 39-08-01 and 39-09-02, and subsection 1 of section 39-20-04.1 of the North Dakota Century
4 Code, relating to speed limits and consequences for driving while under the influence; and to
5 provide a penalty.

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

7 **SECTION 1.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of
8 the North Dakota Century Code is created and enacted as follows:

9 Driving while under 2 points
10 the influence, in violation of
11 39-08-01, with less than
12 eleven one-hundredths of one
13 percent by weight

14 **SECTION 2. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota
15 Century Code is amended and reenacted as follows:

16 7. The period of suspension imposed for a violation of section 39-08-01 or equivalent
17 ordinance is:

18 a. Ninety-one days if the operator's record shows the person has not violated
19 section 39-08-01 or equivalent ordinance within the five years preceding the
20 last violation and the violation was for an alcohol concentration of at least
21 eight one-hundredths of one percent by weight and under sixteen
22 one-hundredths of one percent by weight. The director shall waive the
23 suspension if the alcohol concentration was under eleven one-hundredths of

one percent by weight and the person was not operating a commercial motor vehicle.

b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.

c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation is for an alcohol concentration of under sixteen one-hundredths of one percent by weight.

e. d. Two years if the operator's record shows the person has at least ~~twice~~ once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight.

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

SECTION 3. AMENDMENT. Section 39-08-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A person may not drive or be in actual physical control of any vehicle upon a highway or upon public or private areas to which the public has a right of access for vehicular use in this state if any of the following apply:

- a. That person has an alcohol concentration of at least ten one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a vehicle.
- b. That person is under the influence of intoxicating liquor.
- c. That person is under the influence of any drug or substance or combination of drugs or substances to a degree which renders that person incapable of safely driving.
- d. That person is under the combined influence of alcohol and any other drugs or substances to a degree which renders that person incapable of safely driving.

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

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,

1 unless the context otherwise requires, "drug court program" means a district
2 court-supervised treatment program approved by the supreme court which
3 combines judicial supervision with alcohol and drug testing and chemical addiction
4 treatment in a licensed treatment program. The supreme court may adopt rules,
5 including rules of procedure, for drug courts and the drug court program.

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

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

14 c. For a third offense within five years, the sentence must include at least sixty
15 days' imprisonment or placement in a minimum security facility, of which
16 forty-eight hours must be served consecutively; a fine of one 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; a
22 fine of one thousand dollars; and an order for addiction evaluation by an
23 appropriate licensed treatment program.

24 e. The execution or imposition of sentence under this section may not be
25 suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an
26 offense subject to subdivision a or b. If the offense is subject to subdivision c
27 or d, the district court may suspend a sentence, except for ten days'
28 imprisonment, under subsection 3 or 4 of section 12.1-32-02 on the condition
29 that the defendant first undergo and complete an evaluation for alcohol and
30 substance abuse treatment and rehabilitation. If the defendant is found to be
31 in need of alcohol and substance abuse treatment and rehabilitation, the

1 district court may order the defendant placed under the supervision and
2 management of the department of corrections and rehabilitation and is
3 subject to the conditions of probation under section 12.1-32-07. The district
4 court shall require the defendant to complete alcohol and substance abuse
5 treatment and rehabilitation under the direction of the drug court program as a
6 condition of probation in accordance with rules adopted by the supreme court.
7 If the district court finds that a defendant has failed to undergo an evaluation
8 or complete treatment or has violated any condition of probation, the district
9 court shall revoke the defendant's probation and shall sentence the defendant
10 in accordance with this subsection.

- 11 f. For purposes of this section, conviction of an offense under a law or
12 ordinance of another state which is equivalent to this section must be
13 considered a prior offense if such offense was committed within the time
14 limitations specified in this subsection.
- 15 g. If the penalty mandated by this section includes imprisonment or placement
16 upon conviction of a violation of this section or equivalent ordinance, and if an
17 addiction evaluation has indicated that the defendant needs treatment, the
18 court may order the defendant to undergo treatment at an appropriate
19 licensed addiction treatment program and the time spent by the defendant in
20 the treatment must be credited as a portion of a sentence of imprisonment or
21 placement under this section.

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

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

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

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

- 20 2. A person violating this section or equivalent ordinance is guilty of an infraction if
21 the alcohol concentration is at least eight one-hundredths of one percent by weight
22 and under eleven one-hundredths of one percent by weight for a first offense in a
23 five-year period, of a class B misdemeanor if the alcohol concentration is at least
24 eleven one-hundredths of one percent by weight and under sixteen
25 one-hundredths of one percent by weight for the first ~~or second~~ offense or if the
26 alcohol concentration is at least eight one-hundredths of one percent by weight
27 and under sixteen one-hundredths of one percent by weight for a second offense
28 in a five-year period, of a class A misdemeanor if the alcohol concentration is at
29 least sixteen one-hundredths of one percent by weight for the first or the second
30 offense within a five-year period or the alcohol concentration is at least eight
31 one-hundredths of one percent by weight and 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.

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, if the alcohol concentration was at at least eight
one-hundredths of one percent by weight and under eleven one-hundredths
of one percent by weight the sentence must include both a fine of at least one
hundred dollars or if the alcohol concentration was at least eleven
one-hundredths of one percent by weight and 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 dollars and in all cases 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; if the alcohol concentration was at least eight one-hundredths of one
percent by weight and under sixteen one-hundredths of one percent by
weight, a fine of at least five hundred dollars or if the alcohol concentration

1 was at least sixteen one-hundredths of one percent by weight a fine of at
2 least one thousand dollars; and an order for addiction evaluation by an
3 appropriate licensed addiction treatment program.

4 c. For a third offense within five years, the sentence must include at least sixty
5 days' imprisonment or placement in a minimum security facility, of which
6 forty-eight hours must be served consecutively; if the alcohol concentration
7 was at least eight one-hundredths of one percent by weight and under sixteen
8 one-hundredths of one percent by weight, a fine of at least one thousand
9 dollars or if the alcohol concentration was at least sixteen one-hundredths of
10 one percent by weight a fine of at least two thousand dollars; and an order for
11 addiction evaluation by an appropriate licensed addiction treatment program.

12 d. For a fourth or subsequent offense within seven years, the sentence must
13 include one hundred eighty days' imprisonment or placement in a minimum
14 security facility, of which forty-eight hours must be served consecutively and a
15 fine of ~~one~~ two thousand dollars.

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

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

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

29 5. As used in subdivision b of subsection 4, the term "imprisonment" includes house
30 arrest. As a condition of house arrest, a defendant may not consume alcoholic
31 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.

SECTION 4. AMENDMENT. Section 39-09-02 of the North Dakota Century Code is amended and reenacted as follows:

39-09-02. Speed limitations.

1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:

a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.

b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.

c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.

- d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].
 - e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
 - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise, unless otherwise permitted, restricted, or required by conditions.
 - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed, and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
 - h. ~~Seventy~~ Seventy-five miles [~~112.65~~ 120.70 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
 3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
 4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

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

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section

39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:

a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight. The director shall waive the suspension if the alcohol concentration was under eleven one-hundredths of one percent by weight and the person was not operating a commercial motor vehicle.

b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.

c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under sixteen one-hundredths of one percent by weight.

e. d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has ~~at least twice previously~~ once been suspended, revoked, or issuance denied under

1 this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or
2 any combination thereof, and the suspensions, revocations, or denials
3 resulted from at least two separate arrests with the last violation or
4 suspension for an alcohol concentration at least sixteen one-hundredths of
5 one percent by weight or if the person's driving record shows that within the
6 five years preceding the date of arrest, the person's operator's license has at
7 least twice previously 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 of under sixteen one-hundredths of
12 one percent by weight.

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