

HOUSE BILL NO. 1452

Introduced by

Representatives Zaiser, Galvin, Grande, Gulleson, 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

- 1 considered a prior offense if such offense was committed within the time
2 limitations specified in this subsection.
- 3 g. If the penalty mandated by this section includes imprisonment or placement
4 upon conviction of a violation of this section or equivalent ordinance, and if an
5 addiction evaluation has indicated that the defendant needs treatment, the
6 court may order the defendant to undergo treatment at an appropriate
7 licensed addiction treatment program and the time spent by the defendant in
8 the treatment must be credited as a portion of a sentence of imprisonment or
9 placement under this section.
- 10 5. As used in subdivision b of subsection 4, the term "imprisonment" includes house
11 arrest. As a condition of house arrest, a defendant may not consume alcoholic
12 beverages. The house arrest must include a program of electronic home detention
13 in which the defendant is tested at least twice daily for the consumption of alcohol.
14 The defendant shall defray all costs associated with the electronic home detention.
15 This subsection does not apply to individuals committed to or under the supervision
16 and management of the department of corrections and rehabilitation.

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

- 19 1. A person may not drive or be in actual physical control of any vehicle upon a
20 highway or upon public or private areas to which the public has a right of access
21 for vehicular use in this state if any of the following apply:
- 22 a. That person has an alcohol concentration of at least ten one-hundredths of
23 one percent by weight at the time of the performance of a chemical test within
24 two hours after the driving or being in actual physical control of a vehicle.
- 25 b. That person is under the influence of intoxicating liquor.
- 26 c. That person is under the influence of any drug or substance or combination of
27 drugs or substances to a degree which renders that person incapable of
28 safely driving.
- 29 d. That person is under the combined influence of alcohol and any other drugs
30 or substances to a degree which renders that person incapable of safely
31 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

- 1 impounded number plates must be sent to the director who must retain them for
2 the period of suspension or revocation, subject to their disposition by the court.
- 3 4. A person convicted of violating this section, or an equivalent ordinance, must be
4 sentenced in accordance with this subsection.
- 5 a. For a first offense, the sentence must include both a fine of at least two
6 hundred fifty dollars and an order for addiction evaluation by an appropriate
7 licensed addiction treatment program. However, if the offense was for a
8 violation in which the person had a blood alcohol content of over fifteen
9 one-hundredths of one percent by weight, the sentence must include at least
10 a fine of one thousand dollars, ten days' imprisonment or placement in a
11 minimum security facility or ninety days' house arrest, and an order for
12 addiction evaluation by an appropriate licensed addiction treatment program.
- 13 b. For a second offense within five years, the sentence must include at least five
14 days' imprisonment or placement in a minimum security facility, of which
15 forty-eight hours must be served consecutively, or thirty days' community
16 service; a fine of at least five hundred dollars; and an order for addiction
17 evaluation by an appropriate licensed addiction treatment program. However,
18 if the two offenses were for violations in which the person had a blood alcohol
19 content of over fifteen one-hundredths of one percent by weight, the sentence
20 must include a fine of two thousand dollars, thirty days' imprisonment or
21 placement in a minimum security facility of which forty-eight hours must be
22 served consecutively or one hundred eighty days' house arrest, and an order
23 for addiction evaluation by an appropriate licensed addiction treatment
24 program.
- 25 c. For a third offense within five years, the sentence must include at least sixty
26 days' imprisonment or placement in a minimum security facility, of which
27 forty-eight hours must be served consecutively; a fine of one thousand dollars;
28 and an order for addiction evaluation by an appropriate licensed addiction
29 treatment program. However, if two of the three offenses were for violations
30 in which the person had a blood alcohol content of over fifteen
31 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:

1 **39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to**
2 **testing.**

3 1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none
4 may be given, but the law enforcement officer shall immediately take possession of
5 the person's operator's license if it is then available and shall immediately issue to
6 that person a temporary operator's permit, if the person then has valid operating
7 privileges, extending driving privileges for the next twenty-five days or until earlier
8 terminated by a decision of a hearing officer under section 39-20-05. The law
9 enforcement officer shall sign and note the date on the temporary operator's
10 permit. The temporary operator's permit serves as the director's official notification
11 to the person of the director's intent to revoke driving privileges in this state and of
12 the hearing procedures under this chapter. The director, upon the receipt of that
13 person's operator's license and a certified written report of the law enforcement
14 officer in the form required by the director, forwarded by the officer within five days
15 after issuing the temporary operator's permit, showing that the officer had
16 reasonable grounds to believe the person had been driving or was in actual
17 physical control of a motor vehicle while in violation of section 39-08-01 or
18 equivalent ordinance or, for purposes of section 39-20-14, had reason to believe
19 that the person committed a moving traffic violation or was involved in a traffic
20 accident as a driver, and in conjunction with the violation or accident the officer
21 has, through the officer's observations, formulated an opinion that the person's
22 body contains alcohol, that the person was lawfully arrested if applicable, and that
23 the person had refused to submit to the test or tests under section 39-20-01 or
24 39-20-14, shall revoke that person's license or permit to drive and any nonresident
25 operating privilege for the appropriate period under this section, or if the person is
26 a resident without a license or a permit to operate a motor vehicle in this state, the
27 director shall deny to the person the issuance of a license or permit for the
28 appropriate period under this section after the date of the alleged violation, subject
29 to the opportunity for a prerevocation hearing and postrevocation review as
30 provided in this chapter. In the revocation of the person's operator's license the
31 director shall give credit for time in which the person was without an operator's

- 1 license after the day of the person's refusal to submit to the test except that the
2 director may not give credit for time in which the person retained driving privileges
3 through a temporary operator's permit issued under this section or section
4 39-20-03.2. The fee for refusal to submit to testing is one hundred dollars. The
5 period of revocation or denial of issuance of a license or permit under this section
6 is:
- 7 a. One year if the person's driving record shows that within the five years
8 preceding the most recent violation of this section, the person's operator's
9 license has not previously been suspended, revoked, or issuance denied for a
10 violation of this chapter or section 39-08-01 or equivalent ordinance.
- 11 b. Two years if the person's driving record shows that within the five years
12 preceding the most recent violation of this section, the person's operator's
13 license has been once previously suspended, revoked, or issuance denied for
14 a violation of this chapter or section 39-08-01 or equivalent ordinance.
- 15 c. Three years if the person's driving record shows that within the five years
16 preceding the most recent violation of this section, the person's operator's
17 license has at least twice previously been suspended, revoked, or issuance
18 denied under this chapter, or for a violation of section 39-08-01 or equivalent
19 ordinance, or any combination thereof, and the suspensions, revocations, or
20 denials resulted from at least two separate arrests.
- 21 2. A person's driving privileges are not subject to revocation under this section if all of
22 the following criteria are met:
- 23 a. No administrative hearing is held under section 39-20-05;
- 24 b. The person mails an affidavit to the director within twenty-five days after the
25 temporary operator's permit is issued. The affidavit must state that the
26 person:
- 27 (1) Intends to voluntarily plead guilty to violating section 39-08-01 or
28 equivalent ordinance within twenty-five days after the temporary
29 operator's permit is issued;
- 30 (2) Agrees that the person's driving privileges must be suspended as
31 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.