

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

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

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

26                   **39-08-01. (Effective through July 31, 2003) Persons under the influence of**  
27 **intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.**

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

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

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

- 16           2. A person violating this section or equivalent ordinance is guilty of a class B  
17                  misdemeanor for the first or second offense in a five-year period, of a class A  
18                  misdemeanor for a third offense in a five-year period, of a class A misdemeanor for  
19                  the fourth offense in a seven-year period, and of a class C felony for a fifth or  
20                  subsequent offense in a seven-year period. The minimum penalty for violating this  
21                  section is as provided in subsection 4. The court shall take judicial notice of the  
22                  fact that an offense would be a subsequent offense if indicated by the records of  
23                  the director or may make a subsequent offense finding based on other evidence.  
24           3. Upon conviction, the court may order the motor vehicle number plates of the motor  
25                  vehicle owned and operated by the offender at the time of the offense to be  
26                  impounded for the duration of the period of suspension or revocation of the  
27                  offender's driving privilege by the licensing authority. The impounded number  
28                  plates must be sent to the director who must retain them for the period of  
29                  suspension or revocation, subject to their disposition by the court.  
30           4. A person convicted of violating this section, or an equivalent ordinance, must be  
31                  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

- 1            ~~one percent by weight~~ for a third ~~or subsequent~~ offense in a five-year period, ~~of a~~  
2            ~~class A misdemeanor for the fourth offense in a seven-year period~~, and of a  
3            class C felony if the alcohol concentration is at least sixteen one-hundredths of  
4            one percent by weight for a ~~fifth~~ third or subsequent offense in a ~~seven-year~~  
5            five-year period. The minimum penalty for violating this section is as provided in  
6            subsection 4. The court shall take judicial notice of the fact that an offense would  
7            be a subsequent offense if indicated by the records of the director or may make a  
8            subsequent offense finding based on other evidence.
- 9            3. Upon conviction, the court may order the motor vehicle number plates of the motor  
10           vehicle owned and operated by the offender at the time of the offense to be  
11           impounded for the duration of the period of suspension or revocation of the  
12           offender's driving privilege by the licensing authority. The impounded number  
13           plates must be sent to the director who must retain them for the period of  
14           suspension or revocation, subject to their disposition by the court.
- 15           4. A person convicted of violating this section, or an equivalent ordinance, must be  
16           sentenced in accordance with this subsection.
- 17           a. For a first offense, if the alcohol concentration was at at least eight  
18           one-hundredths of one percent by weight and under eleven one-hundredths  
19           of one percent by weight the sentence must include ~~both~~ a fine of at least one  
20           hundred dollars or if the alcohol concentration was at least eleven  
21           one-hundredths of one percent by weight and under sixteen one-hundredths  
22           of one percent by weight a fine of at least two hundred fifty dollars, if the  
23           alcohol concentration was at least sixteen one-hundredths of one percent by  
24           weight a fine of at least five hundred dollars and in all cases an order for  
25           addiction evaluation by an appropriate licensed addiction treatment program.
- 26           b. For a second offense within five years, the sentence must include at least five  
27           days' imprisonment or placement in a minimum security facility, of which  
28           forty-eight hours must be served consecutively, or thirty days' community  
29           service; if the alcohol concentration was at least eight one-hundredths of one  
30           percent by weight and under sixteen one-hundredths of one percent by  
31           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

1 in which the defendant is tested at least twice daily for the consumption of alcohol.  
2 The defendant shall defray all costs associated with the electronic home detention.  
3 This subsection does not apply to individuals committed to or under the  
4 supervision and management of the department of corrections and rehabilitation.

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

7 **39-09-02. Speed limitations.**

- 8 1. Subject to the provisions of section 39-09-01 and except in those instances where  
9 a lower speed is specified in this chapter, it presumably is lawful for the driver of a  
10 vehicle to drive the same at a speed not exceeding:
- 11 a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet  
12 [15.24 meters] of a grade crossing of any steam, electric, or street railway  
13 when the driver's view is obstructed. A driver's view is deemed to be  
14 obstructed when at any time during the last two hundred feet [60.96 meters]  
15 of the driver's approach to such crossing, the driver does not have a clear and  
16 uninterrupted view of such railway crossing and of any traffic on such railway  
17 for a distance of four hundred feet [121.92 meters] in each direction from such  
18 crossing.
  - 19 b. Twenty miles [32.19 kilometers] an hour when passing a school during school  
20 recess or while children are going to or leaving school during opening or  
21 closing hours, unless a lower speed is designated or posted by local  
22 authorities.
  - 23 c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet  
24 [15.24 meters] and in traversing an intersection of highways when the driver's  
25 view is obstructed. A driver's view is deemed to be obstructed when at any  
26 time during the last fifty feet [15.24 meters] of the driver's approach to such  
27 intersection, the driver does not have a clear and uninterrupted view of such  
28 intersection and of the traffic upon all of the highways entering such  
29 intersection for a distance of two hundred feet [60.96 meters] from such  
30 intersection.

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

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

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

- 1           39-20-05, or if that hearing is requested and the findings, conclusion, and decision  
2           from the hearing confirm that the law enforcement officer had reasonable grounds  
3           to arrest the person and test results show that the arrested person was driving or  
4           in physical control of a vehicle while having an alcohol concentration of at least ten  
5           one-hundredths of one percent by weight or, with respect to a person under  
6           twenty-one years of age, an alcohol concentration of at least two one-hundredths  
7           of one percent by weight at the time of the performance of a test within two hours  
8           after driving or being in physical control of a motor vehicle, the director shall  
9           suspend the person's operator's license as follows:
- 10          a.    For ninety-one days if the person's driving record shows that, within the five  
11                years preceding the date of the arrest, the person has not previously violated  
12                section 39-08-01 or equivalent ordinance or the person's operator's license  
13                has not previously been suspended or revoked under this chapter and the  
14                violation was for an alcohol concentration of at least eight one-hundredths of  
15                one percent by weight and under sixteen one-hundredths of one percent by  
16                weight. The director shall waive the suspension if the alcohol concentration  
17                was under eleven one-hundredths of one percent by weight and the person  
18                was not operating a commercial motor vehicle.
- 19          b.    For one hundred eighty days if the operator's record shows the person has  
20                not violated section 39-08-01 or equivalent ordinance within five years  
21                preceding the last violation and the last violation was for an alcohol  
22                concentration of at least sixteen one-hundredths of one percent by weight.
- 23          c.    For three hundred sixty-five days if the person's driving record shows that,  
24                within the five years preceding the date of the arrest, the person has once  
25                previously violated section 39-08-01 or equivalent ordinance or the person's  
26                operator's license has once previously been suspended or revoked under this  
27                chapter with the last violation or suspension for an alcohol concentration  
28                under sixteen one-hundredths of one percent by weight.
- 29          e.    d.    For two years if the person's driving record shows that within the five years  
30                preceding the date of the arrest, the person's operator's license has ~~at least~~  
31                ~~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.