

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2150
(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact two new sections to chapter 39-06.2 of the North Dakota Century Code, relating to furnishing driving record information and to records of imminent hazard disqualification of commercial drivers; and to amend and reenact subsection 67 of section 39-01-01 and sections 39-06.2-02 and 39-06.2-10 of the North Dakota Century Code, relating to definitions and disqualification of commercial motor vehicle operators.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

Driving record information to be furnished. Notwithstanding any other provision of law, the director shall furnish, upon request and payment of a fee of three dollars, full information regarding the driving record of a person who has been issued a commercial driver's license to an employer or to a prospective employer if the person has given written consent to the prospective employer for this information.

SECTION 2. A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

Imminent hazard disqualification - Records. A disqualification imposed in accordance with the provisions of 49 CFR part 383.52 relating to notification from the federal motor carrier safety administration that the driver is disqualified from driving a commercial motor vehicle and is determined to constitute an imminent hazard becomes a part of the driver's record maintained by the director.

SECTION 3. AMENDMENT. Subsection 67 of section 39-01-01 of the North Dakota Century Code is amended and reenacted as follows:

67. "Schoolbus" means ~~any a commercial motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or to or from school-related activities, or privately owned and operated for compensation for the transportation of children to or from school or to or from school-related activities~~ used to transport preprimary, primary, or secondary school students from home to school, from school to home, or to and from school-related events. For the purposes of chapter 39-21, "schoolbus" means any motor vehicle that is owned or leased by a public or governmental agency and used to transport primary or secondary school students to or from school or to or from school-related events, or is privately owned and operated for compensation to transport primary or secondary school students to or from school or to or from school-related events. Schoolbus does not include a bus used as a common carrier.

SECTION 4. AMENDMENT. Section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.

2. "Alcohol concentration" means:
 - a. The number of grams of alcohol per one hundred milliliters of blood;
 - b. The number of grams of alcohol per two hundred ten liters of breath; or
 - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
 - a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
 - b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
 - c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or
 - d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.

14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
15. "Fatality" means the death of a person as a result of a motor vehicle accident.
- ~~16.~~ "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
- ~~17.~~ "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
- ~~18.~~ "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit or units.
- ~~19.~~ "Hazardous materials" has the meaning as that found in section 103 of the Hazardous Materials Transportation Act [49 App. U.S.C. 1801 et seq.].
- ~~20.~~ "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- ~~21.~~ "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.
- ~~22.~~ "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
- ~~23.~~ "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
- ~~24.~~ "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
 - a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
 - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely; ~~or~~
 - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident; ~~;~~
 - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
 - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or

- f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported.

~~22:~~ 25. "State" means a state of the United States or the District of Columbia.

~~23:~~ 26. "United States" means the fifty states and the District of Columbia.

SECTION 5. AMENDMENT. Section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10. Disqualification and cancellation –Penalty.

1. Disqualification offenses. Any person is disqualified from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:
 - a. Driving a commercial motor vehicle under the influence of alcohol or drugs;
 - b. Leaving the scene of an accident involving a commercial motor vehicle driven by the person in violation of section 39-08-04, 39-08-05, 39-08-07, or 39-08-09;
 - c. Using a commercial motor vehicle in the commission of any felony as defined in this chapter;
 - d. Refusal to submit to a test to determine the driver's alcohol concentration while driving a commercial motor vehicle; or
 - e. Driving or being in actual physical control of a commercial motor vehicle while the alcohol concentration of the person's blood, breath, or urine is four one-hundredths of one percent or more by weight.

If any of the above violations occurred while transporting a hazardous material required to be placarded, the person is disqualified for a period of not less than three years.

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed after July 1, 1989, may be considered in applying this subsection.
3. The director may adopt rules under section 39-06.2-14, establishing guidelines, including conditions, under which a disqualification for life under ~~subsection~~ subsections 2, 8, 10, and 12 may be reduced to a period of not less than ten years.
4. A person is disqualified from driving a commercial motor vehicle for life who uses a commercial motor vehicle in the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.
5. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period.
6. Disqualification for railroad-highway grade crossing violation:
 - a. A driver who is convicted of driving a commercial motor vehicle in violation of a federal, state, or local law or regulation pertaining to any one of the following six offenses at a railroad-highway grade crossing is disqualified for the period of time specified in subdivision b:

- (1) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
 - (2) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
 - (3) For drivers who are always required to stop, failing to stop before driving onto the crossing;
 - (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
 - (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; and
 - (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.
- b. Duration of disqualification for a railroad-highway grade crossing violation:
- (1) First violation. A driver is disqualified for not less than sixty days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.
 - (2) Second violation. A driver is disqualified for not less than one hundred twenty days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.
 - (3) Third or subsequent violation. A driver is disqualified for not less than one year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.
7. For a first conviction of driving while under the influence of alcohol or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
 8. For a second conviction of driving while under the influence or being under the influence of a controlled substance or refusal to be tested while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
 9. For a first conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
 10. For a second conviction for leaving the scene of an accident while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
 11. For a first conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for one year.
 12. For a second conviction for using a vehicle to commit a felony while operating a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.
 13. For a conviction for using a vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance while operating a commercial motor

vehicle or a noncommercial motor vehicle, a commercial driver's licenseholder must be disqualified from operating a commercial motor vehicle for life.

14. A person is disqualified from driving a commercial motor vehicle for a period of not less than sixty days if convicted of any combination of two serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and either conviction results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
15. A person is disqualified from driving a commercial motor vehicle for a period of not less than one hundred twenty days if convicted of any combination of three or more serious traffic violations within a three-year period while operating a noncommercial motor vehicle, and any of the convictions results in the revocation, cancellation, or suspension of an operator's license, including a commercial driver's license.
16. Notice and hearing. Prior to suspending, revoking, or disqualifying a driver under this section, the director must provide the driver with notice of opportunity for hearing, in accordance with section 39-06-33, and the hearing requested must be held in accordance with section 39-06-33.
- ~~8.~~ 17. After suspending, revoking, or canceling a commercial driver's license, the director shall update the director's records to reflect that action within ten days. After suspending, revoking, or canceling a nonresident commercial driver's privileges, the director shall notify the licensing authority of the state that issued the commercial driver's license or commercial driver's instruction permit within ten days.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2150.

Senate Vote: Yeas 44 Nays 0 Absent 3

House Vote: Yeas 82 Nays 11 Absent 1

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State