

Hearing date: January 27, 2025

House Judiciary Committee  
2025 ND Legislature

Chairperson Lawrence Klemin  
Committee Members

From: Rozanna C Larson  
Ward County State's Attorney

RE: House Bill 1364

Chairperson Klemin and Members of the Committee,

This is my written testimony in favor of House Bill 1364 and ask the committee submits a DO PASS vote. I am the State's Attorney for Ward County and have been a prosecutor for 27 years.

The purpose of the requested amended language is to be consistent with other statutory language as it relates to benefits of drug court (treatment court) participants. Currently there is a conflict in the statutes with the policies or practice of DOT.

Specifically, NDCC 39-08-01.5 (3) states "If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to drug court, mental health court, or veterans treatment docket and successfully completes the drug court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with 12.1-032-07.2.

I am part of the Drug Court team in Ward County. The issue arises with the records at DOT. Administratively the offenders license is suspended often times even before the offender enters a guilty plea. Once they enter a guilty plea, criminal judgment is entered and sent to DOT. This gets recorded onto their driving record. Currently there is no mechanism to have the conviction or suspension removed when they have successfully completed drug court, even though legally the case no longer exists because it has been dismissed and sealed.

Participants have been negatively affected by these convictions and suspensions remaining on their driving record.

There has been a concern of this proposed amendment conflicting with Federal masking prohibitions. (42 CFR 383.51 attached). This amendment specifically addresses that issue, wherein it would not apply in those situations.

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1364

Introduced by

Representatives Klemin, Karls, Lefor, Louser, Schneider

Senators Dwyer, Larson, Myrdal

- 1 A BILL for an Act to amend and reenact subsection 3 of section 39-08-01.5 of the North Dakota  
2 Century Code, relating to the partial suspension of sentence for drug court program, mental  
3 health court program, or veterans treatment docket completion.

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

5 **SECTION 1. AMENDMENT.** Subsection 3 of section 39-08-01.5 of the North Dakota  
6 Century Code is amended and reenacted as follows:

- 7 3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to  
8 drug court, mental health court, or veterans treatment docket and successfully  
9 completes a drug court program, mental health court, or veterans treatment docket,  
10 the court shall dismiss the case and seal the file in accordance with section  
11 12.1-32-07.2. The court also shall issue an order to the department director to remove  
12 the conviction and suspension based on the conviction from the driving record of the  
13 defendant, unless doing so is prohibited by title 49, Code of Federal Regulations,  
14 section 383.51, or other federal or state law.

Code of Federal Regulations

Title 49. Transportation

Subtitle B. Other Regulations Relating to Transportation

Chapter III. Federal Motor Carrier Safety Administration, Department of Transportation (Refs & Annos)

Subchapter B. Federal Motor Carrier Safety Regulations

Part 383. Commercial Driver's License Standards; Requirements and Penalties (Refs & Annos)

Subpart D. Driver Disqualifications and Penalties (Refs & Annos)

49 C.F.R. § 383.51

§ 383.51 Disqualification of drivers.

Currentness

(a) General.

(1) A person required to have a CLP or CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) The disqualification period must be in addition to any other previous periods of disqualification.

(6) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) must not be reinstated.

(7) A foreign commercial driver is subject to disqualification under this subpart.

(b) Disqualification for major offenses. Table 1 to § 383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

Table 1 to § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for ***		For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for ***		For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials as defined in § 383.5, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for ***		For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for ***		For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for ***
	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	
(1) Being under the influence of alcohol as prescribed by State law ***	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	Life
(2) Being under the influence of a controlled substance ***	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	Life
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV ***	1 year	3 years	Not applicable	3 years	1 year	3 years	1 year	3 years	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part ***	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	Life
(5) Leaving the scene of an accident ***	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	Life
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) or (10) of this table ***	1 year	3 years	1 year	3 years	1 year	3 years	1 year	3 years	Life
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's	1 year	3 years	Not applicable	3 years	1 year	3 years	1 year	3 years	Not applicable.

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CLP or CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.....

(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.....	1 year.....	Not applicable.....	3 years.....	Life.....	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.....					Life-not eligible for 10-year reinstatement.
	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	
(10) Using a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11).....	Life—not eligible for 10-year reinstatement.	Not applicable.....	Life—not eligible for 10-year reinstatement.	Life—not eligible for 10-year reinstatement.	Not applicable.

(c) Disqualification for serious traffic violations. Table 2 to § 383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

Table 2 to § 383.51

	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CLP or CDL holder must be disqualified from operating a CMV for * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CLP or CDL holder must be disqualified from operating a CLP or CDL holder must be disqualified from operating a CMV for * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or
If the driver operates a motor vehicle and is convicted of:	*	*	*	*

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	60 days	60 days	120 days	non-CMV driving privileges, for * * *
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the regulated or posted speed limit.....	60 days	60 days	120 days	120 days.
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property.....	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes..	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely.....	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CLP or CDL.....	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CLP or CDL in the driver's possession <sup>1</sup> .....	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CLP or CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.....	60 days	Not applicable	120 days	Not applicable.
(9) Violating a State or local law or ordinance on motor vehicle traffic control prohibiting texting while driving a CMV. <sup>2</sup> .....	60 days	Not applicable	120 days	Not applicable.
(10) Violating a State or local law or ordinance on motor vehicle traffic control restricting or prohibiting the use of a hand-held mobile telephone while driving a CMV. <sup>2</sup> .....	60 days	Not applicable	120 days	Not applicable.

(d) Disqualification for railroad-highway grade crossing offenses. Table 3 to § 383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, when the driver is operating a CMV at the time of the violation, as follows:

Table 3 to § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because * * *	For a first conviction a person required to have a CLP or CDL and	For a second conviction of any combination of offenses in this Table	For a third or subsequent conviction of any combination of offenses

	a CLP or CDL holder must be disqualified from operating a CMV for * * *	in a separate incident within a 3- year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	in this Table in a separate incident within a 3- year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days.....	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days.....	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days.....	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days.....	No less than 120 days	No less than 1 year.
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days.....	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient	No less than 60 days.....	No less than 120 days	No less than 1 year.

undercarriage  
clearance \* \* \*.

(e) Disqualification for violating out-of-service orders. Table 4 to § 383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified when the driver is operating a CMV at the time of the violation, as follows:

Table 4 to § 383.51

If the driver operates a CMV and is convicted of * * *	For a first conviction while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials	No less than 180 days or more than 1 year.....	No less than 2 years or more than 5 years	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials as defined in § 383.5, or while operating a vehicle designed to transport 16 or more passengers, including the driver	No less than 180 days or more than 2 years.....	No less than 3 years or more than 5 years	No less than 3 years or more than 5 years.

**Credits**

[53 FR 39050, Oct. 4, 1988; 54 FR 40788, Oct. 3, 1989; 55 FR 6727, Feb. 26, 1990; 57 FR 53295, Nov. 9, 1992; 59 FR 26028, May 18, 1994; 62 FR 37151, July 11, 1997; 64 FR 48111, Sept. 2, 1999; 67 FR 49756, July 31, 2002; 68 FR 4396, Jan. 29, 2003;



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72 FR 36787, July 5, 2007; 75 FR 59134, Sept. 27, 2010; 76 FR 26879, May 9, 2011; 76 FR 75486, Dec. 2, 2011; 77 FR 59825, Oct. 1, 2012; 78 FR 58479, Sept. 24, 2013; 78 FR 60231, Oct. 1, 2013; 84 FR 35338, July 23, 2019; 86 FR 35640, July 7, 2021]

SOURCE: 52 FR 20587, June 1, 1987; 54 FR 40788, Oct. 3, 1989; 57 FR 31457, July 16, 1992; 59 FR 26028, May 18, 1994; 59 FR 60323, Nov. 23, 1994; 61 FR 9564, March 8, 1996; 61 FR 14679, April 3, 1996; 62 FR 1296, Jan. 9, 1997; 64 FR 48110, Sept. 2, 1999; 66 FR 49872, Oct. 1, 2001; 67 FR 49755, July 31, 2002; 67 FR 61821, Oct. 2, 2002; 68 FR 23849, May 5, 2003; 70 FR 56593, Sept. 28, 2005; 70 FR 66489, Nov. 2, 2005; 71 FR 2898, Jan. 18, 2006; 73 FR 73123, Dec. 1, 2008; 76 FR 75486, Dec. 2, 2011; 77 FR 59825, Oct. 1, 2012; 78 FR 16194, March 14, 2013; 78 FR 17880, March 25, 2013; 78 FR 24688, April 26, 2013; 80 FR 59072, Oct. 1, 2015; 81 FR 47720, July 22, 2016; 81 FR 87730, Dec. 5, 2016; 81 FR 88802, Dec. 8, 2016; 83 FR 48975, Sept. 28, 2018; 86 FR 35640, July 7, 2021; 86 FR 55742, Oct. 7, 2021; 87 FR 59036, Sept. 29, 2022, unless otherwise noted.

AUTHORITY: 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub.L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub.L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub.L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub.L. 112–141, 126 Stat. 405, 830; sec. 23019 of Pub.L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

Notes of Decisions (16)

Current through January 16, 2025, 90 FR 5424. Some sections may be more current. See credits for details.

**Footnotes**

- 1 Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CLP or CDL on the date the citation was issued, shall not be guilty of this offense.
- 2 Driving, for the purpose of this disqualification, means operating a commercial motor vehicle on a highway, including while temporarily stationary because of traffic, a traffic control device, or other momentary delays. Driving does not include operating a commercial motor vehicle when the driver has moved the vehicle to the side of, or off, a highway and has halted in a location where the vehicle can safely remain stationary.

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