CHAPTER 39-08
REGULATIONS GOVERNING OPERATORS

39-08-01. Persons under the influence of intoxicating liquor or any other drugs or substances not to operate vehicle - Penalty.

1. a. 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:
   (1) That person has an alcohol concentration of at least eight 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.
   (2) That person is under the influence of intoxicating liquor.
   (3) 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.
   (4) 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.
   (5) That individual refuses to submit to any of the following:
      (a) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
      (b) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.
   (6) Paragraph 5 does not apply to an individual unless the individual has been advised of the consequences of refusing a chemical test consistent with the Constitution of the United States and the Constitution of North Dakota.

   b. The fact 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. It is an affirmative defense that a drug was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person. If the individual violated paragraph 1, 2, 3, or 4 of subdivision a and paragraph 5 of subdivision a and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

   c. The driver of a multipassenger bicycle is subject to a violation of this section but a multipassenger bicycle passenger may not be charged with a violation of this section.

2. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2 or 39-20-01, is guilty of an offense under this section.

3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. 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.

4. Upon conviction of a second or subsequent offense within seven years under this section or equivalent ordinance, the court may order the motor vehicle number plates of all of the motor vehicles owned and operated by the offender at the time of the offense to be destroyed by the office of the police officer that made the arrest. The offender shall deliver the number plates to the court without delay at a time certain as ordered by the court following the conviction. The court shall deliver the number plates to the office and notify the department of the order. An offender who does not provide the number plates to the court at the appropriate time is subject to revocation of probation. The court may make an exception to this subsection, on an individual basis, to avoid undue hardship to an individual who is completely dependent on the motor vehicle for the necessities of life, including a family member of the convicted individual and a co-owner of the motor vehicle, or if the offender is participating in the twenty-four seven sobriety program.
5. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
   a. (1) For a first offense, the sentence must include both a fine of at least five hundred dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
      (2) In addition, for a first offense when the convicted person has an alcohol concentration of at least sixteen one-hundredths of one percent by weight, the offense is an aggravated first offense and the sentence must include a fine of at least seven hundred fifty dollars and at least two days' imprisonment.
   b. For a second offense within seven years, the sentence must include at least ten days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand five hundred dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
   c. For a third offense within seven years, the sentence must include at least one hundred twenty days' imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed addiction treatment program; at least three hundred sixty days' supervised probation; and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
   d. For a fourth or subsequent offense within fifteen years, the sentence must include at least one year and one day's imprisonment; a fine of at least two thousand dollars; an order for addiction evaluation by an appropriate licensed treatment program; at least two years' supervised probation; and participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
   e. The imposition of sentence under this section may not be deferred under subsection 4 of section 12.1-32-02 for an offense subject to this section.
   f. If the offense is subject to subdivision a or b, a municipal court or district court may not suspend a sentence, but may convert each day of a term of imprisonment to ten hours of community service for an offense subject to paragraph 2 of subdivision a. If the offense is subject to subdivision c, the district court may suspend a sentence, except for sixty days' imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the offense is subject to subdivision d, the district court may suspend a sentence, except for one year's imprisonment, under subsection 3 of section 12.1-32-02 on the condition that the defendant first undergo and complete an evaluation for alcohol and substance abuse treatment and rehabilitation. If the

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

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

h. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subsection 1 of section 12.1-32-02 and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.

i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court may order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.

j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.

6. As used in subdivisions b and c of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.

7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and requires sobriety breath testing twice per day seven days per week or electronic alcohol monitoring, urine testing, or drug patch testing. The offender is responsible for all twenty-four seven sobriety program fees and the court may not waive the fees. For purposes of this section, the twenty-four seven sobriety program is a condition of probation and a court may not order participation in the program as part of the sentence. If an individual ordered to participate in the twenty-four seven program is not a resident of this state, that individual shall enroll in a twenty-four seven program or an alcohol compliance program if available in that individual's state of residence and shall file proof of such enrollment.

39-08-01.1. Prior offenses.

For purposes of this chapter, chapter 39-06.1, and chapter 39-20 a previous conviction does not include any prior violation of section 39-08-01 or equivalent ordinance if the offense occurred prior to July 1, 1981.

39-08-01.2. Special punishment for causing injury or death while operating a vehicle while under the influence of alcohol or any other drugs or substances - Penalty.

1. An individual is guilty of criminal vehicular homicide if the individual commits an offense under section 39-08-01 or equivalent ordinance and as a result the individual causes a death of another individual to occur, including the death of an unborn child, unless the individual who causes the death of the unborn child is the mother. A violation of this subsection is a class A felony. If an individual commits a violation under this subsection, the court shall impose at least three years' imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03, or equivalent ordinance, the court shall impose at least ten years' imprisonment. An individual may not be prosecuted and found guilty of this and an offense under chapter 12.1-16 if the conduct arises out of the same incident.
2. An individual is guilty of criminal vehicular injury if the individual violates section 39-08-01 or an equivalent ordinance and as a result that individual causes substantial bodily or serious bodily injury to another individual. Violation of this subsection is a class B felony. If an individual violates this subsection, the court shall impose at least one year and one day's imprisonment. If the individual violates this section after having been previously convicted of a violation of section 39-08-01 or 39-08-03 or an equivalent ordinance, the court shall impose at least two years' imprisonment.
3. The sentence under this section may not be suspended unless the court finds that manifest injustice would result from the imposition of the sentence. Before a sentence under this section applies, a defendant must be notified of the minimum mandatory sentence. The elements of an offense under this section are the elements of an offense for a violation of section 39-08-01 and the additional elements that create an offense in each subsection of this section. Whether an individual caused death or substantial or serious bodily injury must be determined in accordance with section 12.1-02-05.

39-08-01.3. Alcohol-related traffic offenses - Seizure, forfeiture, and sale of motor vehicles.

A motor vehicle owned and operated by an individual upon a highway or upon public or private areas to which the public has a right of access for vehicular use may be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the individual is in violation of section 39-08-01, 39-08-01.2, or 39-08-01.4, or an equivalent ordinance and has been convicted of violating section 39-08-01 or an equivalent ordinance at least one other time within the seven years preceding the violation.

39-08-01.4. Driving while under the influence of alcohol or any other drugs or substances while being accompanied by a minor - Penalty.

1. It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony.
2. The minimum sentence for an individual convicted of violating this section must include:
   a. For a first offense, a fine of seven hundred fifty dollars, at least two days' imprisonment, an order for a substance abuse evaluation by an appropriate licensed addiction treatment program, at least three hundred sixty days of unsupervised probation, and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.
   b. For a second or subsequent offense within fifteen years, at least one year and one day's imprisonment, a fine of two thousand dollars, an order for a substance abuse evaluation by an appropriate licensed addiction treatment program, at least two years' supervised probation, and at least three hundred sixty days' participation in the twenty-four seven sobriety program under chapter 54-12 as a mandatory condition of probation.

39-08-01.5. Partial suspension of sentence for treatment court program, mental health court program, or veterans treatment docket completion.

1. Notwithstanding section 39-08-01:
   a. All but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a treatment court program, mental health court program, or veterans treatment docket approved by the supreme court.
   b. If the treatment court determines a defendant participating in a treatment court program has substantially complied with the requirements of the treatment court program, the treatment court may suspend the defendant's electronic alcohol monitoring and sobriety breath testing requirement under the twenty-four seven sobriety program for the six months preceding completion of the treatment court program.
2. Upon successful completion of a treatment court program, mental health court program, or veterans treatment docket, a defendant convicted of a felony under section 39-08-01 and sentenced to treatment court, mental health court, or veterans treatment docket is deemed to have been convicted of a misdemeanor.
3. If a defendant convicted of a misdemeanor under section 39-08-01 is sentenced to treatment court, mental health court, or veterans treatment docket and successfully completes a treatment court program, mental health court, or veterans treatment docket, the court shall dismiss the case and seal the file in accordance with section 12.1-32-07.2. The court also shall issue an order to the director to remove the conviction and suspension based on the conviction from the driving record of the defendant, unless doing so is prohibited by title 49, Code of Federal Regulations, section 383.51, or other federal or state law.

39-08-01.6. Criminal record - Seal - Exception.

1. The court shall seal an individual's criminal record in accordance with sections 12.1-32-07.1 and 12.1-32-07.2 which relates to a conviction under section 39-08-01, if the individual:
   a. Has pled guilty or nolo contendere to, or has been found guilty of a violation under section 39-08-01 or an equivalent ordinance; and
   b. Has not pled guilty or nolo contendere to, or has not been found guilty of a subsequent violation of section 39-08-01 or an equivalent ordinance, or any other

criminal offense, within seven years of the first violation under section 39-08-01 or an equivalent ordinance.

2. This section does not apply to an individual licensed as a commercial driver under section 39-06.2-10 or to a prosecutor's access to a prior offense for purposes of enhancement under subsection 3 of section 39-08-01 or an equivalent ordinance.

39-08-02. Person conveying passengers not to engage drivers addicted to intoxicants - Penalty.

No person owning or having the direction or control of any vehicle for the conveyance of passengers in this state may employ or continue in the person's employment as a driver of such vehicle any person who is known to the actor to be addicted to a controlled substance or given to the excessive use of controlled substances or intoxicating liquors. Any person violating the provisions of this section is guilty of an infraction and is liable for all damages sustained by reason of such violation.

39-08-03. Reckless driving - Aggravated reckless driving - Penalty.

Any person is guilty of reckless driving if the person drives a vehicle:

1. Recklessly in disregard of the rights or safety of others; or
2. Without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or the property of another.

Except as otherwise herein provided, any person violating the provisions of this section is guilty of a class B misdemeanor. Any person who, by reason of reckless driving as herein defined, causes and inflicts injury upon the person of another, is guilty of aggravated reckless driving, and is guilty of a class A misdemeanor.

39-08-03.1. Exhibition driving and drag racing - Definitions - Penalty.

1. No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.
2. As used in this section:
   a. "Drag race" means the operation of two or more vehicles from a point side by side by accelerating rapidly in a competitive attempt to cause one vehicle to outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
   b. "Exhibition driving" means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.
   c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long-distance driving route.
3. Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

39-08-04. Accidents involving death or personal injuries - Penalty.

1. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop or return with the vehicle as close as possible to the scene of the accident and in every event shall remain at the scene of the accident until that driver has fulfilled the requirements of section 39-08-06. Every stop required by this section must be made without obstructing traffic more than is necessary.
2. Any person failing to comply with the requirements of this section under circumstances involving personal injury is guilty of a class A misdemeanor. Any person negligently failing to comply with the requirements of this section under circumstances involving serious personal injury is guilty of a class C felony. Any person negligently failing to comply with the requirements of this section under circumstances involving death is guilty of a class B felony.
3. The director shall revoke the license or permit to drive or nonresident operating privilege of a person convicted under this section.

39-08-04.1. Emergency care or services rendered - Liability.

Any person who is an unpaid volunteer, who in good faith, renders emergency care or services at or near the scene of an accident, disaster, or other emergency, or en route to a treatment facility, is not liable to the recipient of the emergency care or services for any damages resulting from the rendering of that care or services.

This section does not relieve a person from liability for damages resulting from the intoxication, willful misconduct, or gross negligence of the person rendering the emergency care or services. Further, liability is not relieved if the emergency care was rendered for remuneration or with the expectation of remuneration.

39-08-05. Crashes involving damage to vehicle - Penalty.

The driver of any vehicle involved in a crash resulting only in property damage to the driver's vehicle or any other vehicle shall immediately stop the vehicle at the scene of the crash or as close to the scene of the crash as possible but shall return to and remain at the scene of the crash until the driver has fulfilled the requirements of section 39-08-06 and 39-08-09. Every such stop must be made without obstructing traffic more than is necessary. Any person failing to stop or comply with the requirements in this section is guilty of a class B misdemeanor.

39-08-06. Duty to give information and render aid.

The driver of any vehicle involved in an accident resulting in injury to or the death of any person or damage to any vehicle which is driven or attended by any person shall give the driver's name and address, and the name of the motor vehicle insurance policy carrier of the driver and owner, as well as the registration number, of the vehicle. Upon request, and if available, the driver of any vehicle involved in the accident shall exhibit the driver's operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any other vehicle involved in the accident and shall render to any person injured in the accident reasonable assistance, including the carrying, or the making of arrangements for the carrying, of the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

39-08-07. Duty upon striking unattended vehicle - Penalty.

The driver of any vehicle which collides with any vehicle which is unattended shall immediately stop and shall then and there either locate and notify the operator or owner of the vehicle of the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and owner of the vehicle striking the unattended vehicle or shall leave in a conspicuous place in the vehicle struck a written notice giving the name and address, as well as the name of the motor vehicle insurance policy carrier, of the driver and of the owner of the vehicle doing the striking and a statement of the circumstances of the collision. Any person violating this section is guilty of a class A misdemeanor.

39-08-08. Duty upon striking highway fixtures or other property.

The driver of any vehicle involved in a crash resulting only in damage to highway fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of the property of the damage. The driver shall provide the driver's name, address, and registration number of the vehicle the driver is driving and shall upon request and if available exhibit the driver's, operator's, or chauffeur's license. The driver shall make report of the crash when and as required in section 39-08-09. The driver shall provide the name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, to the owner or person in charge of the damaged property or to the law enforcement officer investigating the crash.

39-08-09. Immediate notice of accident - Penalty.

1. The driver of a vehicle involved in an accident resulting in injury to or death of any individual, or property damage to an apparent extent of at least four thousand dollars, shall immediately give notice of the accident to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or the state highway patrol. A driver who violates this section must be assessed a fine of fifty dollars. The name of the motor vehicle insurance policy carrier and the policy number of the driver, or if the driver is not the owner of the vehicle, then the motor vehicle insurance policy carrier and the policy number of the owner of the vehicle, must be furnished to the law enforcement officer investigating the accident. If the driver does not have the required information concerning insurance to furnish to the investigating law enforcement officer, then within five days of the accident the driver shall supply that information to the driver's license division in the form the division requires.
2. The director may suspend the license or permit to drive and any nonresident operating privileges of any person failing to comply with the duties as provided in sections 39-08-06 through 39-08-09 until those duties have been fulfilled, and the director may extend the suspension not to exceed thirty days.
3. The driver of a vehicle involved in an accident with an undomesticated animal resulting in property damage only to the driver's vehicle is exempt from the notice requirements of this section, regardless of the amount of damage to the driver's vehicle.

39-08-10. Officer to report.

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle crash required to be reported as provided in section 39-08-09 either at the time and at the scene of the crash or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director a report of the crash in the format prescribed by the director. The report must contain all the information required therein unless the information is not available, and must be transmitted electronically to the department of transportation using the software prescribed by the director.

39-08-10.1. Investigating agency responsible to notify immediate family.

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the immediate family of the person or persons seriously injured or deceased, or making arrangements to have the immediate family notified by clergy or other suitable person.
2. The investigating law enforcement agency may not release to the public the identity of the person or persons seriously injured or deceased until the first of the following events occurs:
   a. A member of the immediate family has been notified and given an opportunity to notify other immediate family members; or
   b. Twenty-four hours have elapsed from the time positive identification was made.

3. For purposes of this section, "immediate family" means spouse, parent, child, sibling, or any person who regularly resides in the household of the seriously injured or deceased person.

39-08-11. When driver unable to report.

1. A crash notice is not required from any person who is physically incapable of making the report during the period of such incapacity.
2. Whenever the driver of a vehicle is physically incapable of giving an immediate notice of a crash and there was another occupant in the vehicle at the time of the crash capable of doing so, the occupant shall make or cause to be given the notice not given by the driver.
3. Whenever the driver is physically incapable of giving notice of a crash and the driver is not the owner of the vehicle, then the owner of the vehicle involved shall within five days after learning of the crash give the notice and insurance information not given by the driver.

39-08-12. False reports.

Repealed by S.L. 1975, ch. 106, § 673.

39-08-13. Crash report forms.

1. The director shall prepare and supply to law enforcement agencies, garages, and other suitable agencies or individuals forms for crash reports required by law, appropriate with respect to the purposes to be served. The reports to be made by investigating officers shall call for sufficiently detailed information to disclose the cause of a traffic crash, conditions then existing, persons and vehicles involved, and whether the requirements for the deposit of security under section 39-16-05 are applicable.
2. Every crash report required to be made to the director must be made in the format prescribed by the director and must contain all the information required therein unless not available.
3. Every law enforcement officer who investigates a vehicle crash for which a report must be made as required in this chapter shall forward a report of such crash to the department within ten days after the crash.
4. Except as provided in subsection 5, reports required to be forwarded by law enforcement officers and the information contained in the reports is not privileged or confidential. Crash reports held by a public entity other than the department of transportation and a law enforcement agency that contracts with service providers are exempt records. In addition, the following information contained in the report is an exempt record as defined in section 44-04-17.1 unless the requester is a party to the crash, a party's legal representative, the insurer of any party to the crash, the agent of that insurer, or the legal representative or insurer of an individual involved in defending or investigating a prior or subsequent claim or crash involving a party to the crash:
   a. Driver identification number of a party in the report;
   b. Telephone number of a party in the report;
   c. Insurance company name and policy number of a party in the report; and
   d. Day and month of birth of a party in the report.
5. Unless the requester is a party to the accident, a party's legal representative, the insurer of any party to the accident, the agent of that insurer, or the legal representative or insurer of an individual involved in defending or investigating a prior or subsequent claim or accident involving a party to the accident, the following information contained in the report is exempt:
   a. The name of a minor party in the report;
   b. Driver identification number of a minor party in the report; and
   c. Telephone number uniquely owned by a minor party in the report.
6. Upon request from a party to the crash, a party's legal representative, the insurer of any party to the crash, the agent of the insurer, or the legal representative or insurer of

an individual involved in defending or investigating a prior or subsequent claim or crash involving a party to the crash, and upon payment of a fee of up to seven dollars, the director shall release a completed copy of the crash report to the entity requesting the information. The request must be made on the form prescribed by the director.

7. Upon request of any person and upon payment of a fee of up to seven dollars, the director may furnish to a requester a copy of an investigating officer's crash report which does not contain any exempt information that may not be disclosed, if the report shows that the crash is one for which a driver is required to file a report under section 39-08-09.
8. Copies of crash reports are not admissible as evidence in any action for damages or criminal proceedings arising out of a motor vehicle crash.
9. The director, without a request under subsection 4, 5, or 6 may send a copy of a crash report to the registered owner of each vehicle involved as indicated by the report.

39-08-14. Public inspection of reports relating to crashes.

1. All crash reports made by persons involved in crashes or by garages shall be without prejudice to the individual so reporting and shall be for the confidential use of the department or other state agencies having use for the records for crash prevention purposes, or for the administration of the laws of this state relating to the deposit of security and proof of financial responsibility by persons driving or the owners of motor vehicles, except that the department may disclose the identity of a person involved in a crash when such identity is not otherwise known or when such person denies the person's presence at such crash.
2. All crash reports and supplemental information filed in connection with the administration of the laws of this state relating to the deposit of security or proof of financial responsibility are confidential and not open to general public inspection, nor may copying of lists of such reports be permitted.
3. No written reports or written information mentioned in this section may be used as evidence in any trial, civil or criminal, arising out of a crash, except that the director shall furnish upon demand of any party to such trial, or upon demand of any court, a certificate showing that a specified crash report has or has not been made to the director in compliance with law.
4. Notwithstanding any other provisions of this chapter, any information compiled or otherwise made available to the department pursuant to this chapter must be transmitted to each and every duly authorized official or agency of the United States requesting such.

39-08-15. Director of the department of transportation to tabulate and analyze crash reports.

The director shall tabulate and may analyze all crash reports and shall publish annually, or at more frequent intervals, statistical information based thereon as to the number and circumstances of traffic crashes.

39-08-16. Any incorporated city may require crash reports.

Any incorporated city or other municipality may by ordinance require that the driver of a vehicle involved in a crash shall file with a designated city department a report of such crash or a copy of any report herein required to be filed with the director. All such reports must be for the confidential use of the city department and subject to the provisions of section 39-08-14.

39-08-17. Magistrates to report convictions to highway commissioner.

Repealed by S.L. 1981, ch. 386, § 3.

39-08-18. Open container law - Penalty.

1. A person may not drink or consume alcoholic beverages, as defined in section 5-01-01, in or on any motor vehicle when the vehicle is upon a public highway or in an

area used principally for public parking. A person may not have in that person's possession on that person's person while in or on a private motor vehicle upon a public highway or in an area used principally for public parking, any bottle or receptacle containing alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed. It is unlawful for the owner of any private motor vehicle or the driver, if the owner be not then present in or on the motor vehicle, to keep or allow to be kept in a motor vehicle when such vehicle is upon the public highway or in an area used principally for public parking any bottle or receptacle containing such alcoholic beverages which has been opened, or the seal broken, or the contents of which have been partially removed except when such bottle or receptacle is kept in the trunk of the motor vehicle when such vehicle is equipped with a trunk, or kept in some other area of the vehicle not normally occupied by the driver or passengers, if the motor vehicle is not equipped with a trunk. A utility compartment or glove compartment must be deemed to be within the area occupied by the driver and passengers. This subsection does not prohibit the consumption or possession of alcoholic beverages in a house car if the consumption or possession occurs in the area of the house car used as sleeping or living quarters and that area is separated from the driving compartment by a solid partition, door, curtain, or some similar means of separation; however, consumption is not authorized while the house car is in motion. Any person violating this subsection must be assessed a fee of fifty dollars; however, the licensing authority may not record the violation against the person's driving record unless the person was the driver of the motor vehicle at the time that the violation occurred.

2. Subsection 1 does not apply to a public conveyance that has been commercially chartered for group use, any passenger for compensation in a for-hire motor vehicle, or a privately owned motor vehicle operated by a person in the course of that person's usual employment transporting passengers at the employer's direction. This subsection does not authorize possession or consumption of an alcoholic beverage by the operator of any motor vehicle described in this subsection while upon a public highway or in an area used principally for public parking.
3. The driver of a multipassenger bicycle may not:
   a. Drink or consume alcoholic beverages, as defined in section 5-01-01, while operating the multipassenger bicycle on any public street, road, path, or highway or while in an area used principally for parking; or
   b. Have in the driver's possession on the driver's person while operating the multipassenger bicycle on a public street, road, path, or highway or while in an area used principally for parking, any bottle or receptacle containing any alcoholic beverage which has been opened, or the seal broken, or the contents of which have been partially removed.

39-08-19. Penalty for harassment of domestic animals.

Any person operating a motorcycle, snowmobile, or other motor vehicle who willfully harasses or frightens any domestic animal, is, upon conviction, guilty of a class B misdemeanor. If injury or death results to the animal due to such action, such person is liable for the value of the animal and exemplary damages as provided in section 36-21-13.

39-08-20. Driving without liability insurance prohibited - Penalty.

1. A person may not drive, or the owner may not cause or knowingly permit to be driven, a motor vehicle in this state without a valid policy of liability insurance in effect in order to respond in damages for liability arising out of the ownership, maintenance, or use of that motor vehicle in the amount required by chapter 39-16.1.
2. Upon being stopped by a law enforcement officer for the purpose of enforcing or investigating the possible violation of an ordinance or state law, the person driving the motor vehicle shall provide to the officer upon request satisfactory evidence, including written or electronic proof of insurance, of the policy required under this section. If unable to comply with the request, that person may be charged with a violation of this

section. If that person produces satisfactory evidence, including written or electronic proof of insurance, of a valid policy of liability insurance in effect at the time of the alleged violation of this section to the office of the prosecutor where the matter is pending, that person may not be found in violation of subsection 1.

3. Notwithstanding section 26.1-30-18, a person may be in violation of subsection 1 for failure to have a valid policy of liability insurance in effect under this section if the time of acquisition of the policy was after the time of the alleged incidence of driving without liability insurance. If the time of acquisition of the policy comes into question, the driver or owner has the burden of establishing the time of acquisition. If the driver is not an owner of the motor vehicle, the driver does not violate this section if the driver provides the court with evidence identifying the owner of the motor vehicle and describing circumstances under which the owner caused or permitted the driver to drive the motor vehicle.
4. For a second or subsequent violation of subsection 1 or equivalent ordinance, the court shall order the motor vehicle number plates of the motor vehicle owned and operated by the person at the time of the violation to be impounded until that person provides proof of insurance and a twenty dollar fee to the court. The person shall deliver the number plates to the court without delay at a time certain as ordered by the court. The court shall deliver the number plates to the office of the police officer that made the arrest and notify the department of the order. A person who does not provide the number plates to the court at the appropriate time is guilty of a class B misdemeanor.
5. For a violation of subsection 1 or equivalent ordinance, the person shall provide proof of motor vehicle liability insurance to the department in the form of a written or electronically transmitted certificate from an insurance carrier authorized to do business in this state. This proof must be provided for a period of one year and kept on file with the department. If the person fails to provide this information, the department shall suspend that person's driving privileges and may not issue or renew that person's operator's license unless that person provides proof of insurance.
6. A person who has violated subsection 1 or equivalent ordinance shall surrender that person's operator's license and purchase a duplicate operator's license with a notation requiring that person to keep proof of liability insurance on file with the department. The fee for this license is fifty dollars and the fee to remove this notation is fifty dollars.
7. When an insurance carrier has certified a motor vehicle liability policy, the insurance carrier shall notify the director no later than ten days after cancellation or termination of the certified insurance policy by filing a notice of cancellation or termination of the certified insurance policy; except that a policy subsequently procured and certified shall, on the effective date of its certification, terminate the insurance previously certified with respect to any motor vehicle designated in both certificates.

39-08-20.1. Uninsured motorist - Insurance deductible.

If a person causes damage to another or another's property with a motor vehicle while in violation of section 39-08-20, at minimum the court shall order that person to pay to the other person the amount of the deductible on that person's insurance.

39-08-20.2. Special mobile equipment and liability insurance - Report - Penalty.

Special mobile equipment is not subject to the requirement of a motor vehicle liability policy under section 39-08-20. However, special mobile equipment must be covered under a liability policy. Failure to provide satisfactory evidence of liability coverage required under this section within ten days after a police officer has requested evidence of liability coverage is an infraction punishable solely by a fine of one hundred fifty dollars for a first violation and is an infraction punishable solely by a fine of three hundred dollars for a second or subsequent violation in three years. A municipal court or district court shall make a report of a violation of this section to the secretary of state for any special mobile equipment owned or operated by a contractor licensed under chapter 43-07.

39-08-21. Medical qualifications exemption for intrastate drivers.

Notwithstanding the adoption by the superintendent of the state highway patrol of federal motor carrier safety regulations pursuant to subsection 3 of section 39-21-46, the provisions of 49 CFR 391.41(b)(1)-(11) do not apply to a person who is qualified through a state medical waiver program to operate a commercial motor vehicle within the boundaries of this state or a person who:

1. Is otherwise qualified to operate a commercial motor vehicle and who possesses, on March 26, 1991, a class 1 license issued pursuant to section 39-06-14, as that section existed on June 30, 1989, or a class A license issued pursuant to chapter 39-06.2;
2. Operates a commercial motor vehicle only within the boundaries of this state; and
3. Has a medical or physical condition that:
   a. Would prevent such person from operating a commercial motor vehicle under federal motor carrier safety regulations contained in 49 CFR, chapter III, subchapter B;
   b. Existed on March 26, 1991, or at the time of the first required physical examination after that date; and
   c. An examining physician has determined has not substantially worsened since March 26, 1991, or the time of the first required physical examination after that date.

39-08-22. Nonpayment for motor fuels - Penalty.

1. For a theft offense in violation of chapter 12.1-23 which involves a person who leaves the premises of an establishment at which motor fuel is offered for retail sale after motor fuel was dispensed into the fuel tank of a motor vehicle that that person drove away without having made due payment or authorized charge for the motor fuel dispensed, the court may:
   a. Upon a person's second conviction, order the suspension of the person's driving privileges for up to three months; and
   b. Upon a person's third or subsequent conviction, order the suspension of the person's driving privileges for up to six months.
2. As used in this section, "conviction" means a final conviction without regard to whether sentence was suspended or deferred or probation was granted after the conviction. Forfeiture of bail, bond, or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, is equivalent to conviction.

39-08-23. Use of a wireless communications device prohibited.

1. The operator of a motor vehicle that is part of traffic may not use a wireless communications device to compose, read, or send an electronic message.
2. Under this section:
   a. "Electronic message" means a self-contained piece of digital communication that is designed or intended to be transmitted between physical devices. The term includes electronic mail, a text message, an instant message, a command or request to access a worldwide web page, or other data that uses a commonly recognized electronic communications protocol. The term does not include:
      (1) Reading, selecting, or entering a telephone number, an extension number, or voice mail retrieval codes and commands into an electronic device for the purpose of initiating or receiving a telephone or cellular phone call or using voice commands to initiate or receive a telephone or cellular phone call;
      (2) Inputting, selecting, or reading information on a global positioning system device or other navigation system device;
      (3) Using a device capable of performing multiple functions, such as fleet management systems, dispatching devices, phones, citizen band radios, music players, or similar devices, for a purpose that is not otherwise prohibited;
      (4) Voice or other data transmitted as a result of making a telephone or cellular phone call;

(5) Data transmitted automatically by a wireless communication device without direct initiation by an individual; or

(6) A wireless communications device used in a voice-activated, voice-operated, or any other hands-free manner.

b. "Traffic" means operation of a motor vehicle while in motion or for the purposes of travel on any street or highway and includes a temporary stop or halt of motion, such as at an official traffic-control signal or sign. The term does not include a motor vehicle that is lawfully parked.

3. This section does not apply if a wireless communications device is used for obtaining emergency assistance to report a traffic accident, medical emergency, or serious traffic hazard or to prevent a crime about to be committed, in the reasonable belief that an individual's life or safety is in immediate danger, or in an authorized emergency vehicle while in the performance of official duties.

39-08-24. Use of an electronic communication device by minor prohibited.

An individual at least sixteen and under eighteen years of age who has been issued a class D license may not operate an electronic communication device to talk, compose, read, or send an electronic message while operating a motor vehicle that is in motion unless the sole purpose of operating the device is to obtain emergency assistance, to prevent a crime about to be committed, or in the reasonable belief that an individual's life or safety is in danger.

39-08-25. Failure to maintain control.

1. An operator of a motor vehicle may not fail to maintain control of that motor vehicle. An individual is in violation of this section if that individual:
   a. Commits an offense under this title and, at the time of the offense, the individual was engaged in the operation of a motor vehicle while distracted; or
   b. Is determined to have been the operator of a motor vehicle that was involved in a reportable accident as defined in section 39-08-09 which resulted in property damage and, at the time the reportable accident occurred, the individual was engaged in the operation of a motor vehicle while distracted.
2. An individual may be issued a citation or summons for any other traffic offense that was committed by the individual in relation to the individual's commission of the traffic offense of failure to maintain control of a motor vehicle.
3. As used in this section, "operation of a motor vehicle while distracted" means the operation of a motor vehicle by an individual who, while operating the vehicle, is engaged in an activity that:
   a. Is not necessary to the operation of the vehicle; and
   b. Actually impairs, or would reasonably be expected to impair, the ability of the individual to safely operate the vehicle.