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10/6/03  
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2003 HOUSE TRANSPORTATION

HB 1439

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439

House Transportation Committee

☐ Conference Committee

Hearing Date 2/7/03

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-7.9
Committee Clerk Signature <i>Lauren B. Zink</i>			

**Minutes:**

**Chairman Weisz:** We will open the hearing on HB 1439; A bill for an act to amend and reenact sections 39-06-32 and 39-06-35, subsection 7 of section 39.06.1-10, sections 39-08-01, 39-08-01.3, 39-20-03.1, and 39-20-03.2, subsection 1 of section 39-20-04.1, subsections 2 and 5 of section 39-20-05, and sections 39-20-07 and 39-20-09 of the North Dakota Century Code, relating to the level of alcohol concentration prohibited for motor vehicle operators and consequences for driving while under the influence.

**Rep. Dave Weiler:** I represent District 30 here in Bismarck. I am here to present HB 1439, it deals with fines and suspensions of driving under the influence, and also includes some provisions for a graduated blood alcohol content. There are others here that are going to go over the details of it.

**Chairman Weisz:** Thank you.

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**John Olson, Philip-Morris Companies, Miller Brewing:** Miller Brewing has been in business obviously a long time, and they know and have grown with the issues of abuse of alcohol. One of those serious abuses is, of course, driving while under the influence of alcoholic beverages and how to deal with the drunk driver on our highways. They have initiated a program called "Tough Laws-State Roads". As a result of that program, they have gone into each of the states and analyzed drunk driving laws and have matched them up against what they believe to be tough sanctions that are needed, remedies that are needed to address this really serious issue of drunk driving. I am going to introduce a representative of Miller Brewing, after I have gone through the bill. I just wanted to tell you how this bill got here today. Thanks to Rep. Weiler, we did that analysis and did that comparison and had the bill drafted accordingly. One of the things that happened, however, that I made a mistake in not communicating clearly to the legislative council on what our position on .08, and Miller's position is neutral. That is an issue that they believe better left to you to decide as a matter of public policy whether or not you want to reduce the blood alcohol content down to .08 instead of the current laws .10, in terms of establishing presumption or evidence of driving while under the influence of alcohol. So where all of those references are, and there are numerous references in the bill to .08, that we want you to understand that that is a decision that you must make and we're not either opposing or supporting the bill's position. The match up between the model legislation that Miller Brewing supports, and North Dakota law really results in a finding that North Dakota law basically is in conformity with the serious consequences that we afford to drunk driving and their recommendations. There are some gaps in that and that's what this bill tries to address. So you will see as we go through the bill increased fines, increased times for license suspension, we'll see forfeiture of

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automobiles, some changes there, and you'll see some jail time, and increase commitment times in jail, and see community service, that is one of the areas that Miller Brewing thinks that can be a remedy as an alternative sentence, and see the graduated BAC provision. There is also under current law, interlock ignitions, treatment services, and another area is law enforcement support. Some of the fines and money that comes from that, will be diverted into law enforcement support as well as into drug rehabilitation and alcohol evaluation and treatment. So those are just the general parameters. Beginning on page 3, there are provision there for surcharges to be made, on section 2, under suspensions the surcharges would be fined \$100 and that would be subject to the legislative appropriation for use to purchase law enforcement equipment. Section 3, for first offense, the first offense violation for license suspension would be 365 days, that could be reduced to a period of 120 days upon proof of the evaluation being made. The next provision is if there is a prior DUI offense, then the life of the suspension would be for 3 years, that could be reduced to 547 days, depending upon an evaluation and following any recommended treatment, and for subsequent violations within that five years, you would have the five year suspension of the drivers license provision. Going next to page 8, beginning in subsection 4, would increase the subsequent offenses to felonies for driving while under the influence going down to subsection 4 for a first offense, there would be imprisonment time, but all of it could be suspended if there were community service, except that there would be at least 24 hours of jail time mandated for that first offense. For the second offense, the 30 day mandatory commitment with community service, that mandatory commitment could be reduced to five days with the community service; so you would have first offense 24 hours in jail, the 2nd offense, 5 days in jail as a minimum, and the 3rd offense would be 30 days mandatory. On page 9, there would be

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a graduated BAC which would increase fines for repeat offenders and those are set out there.

Going to page 10, that deals with the licensure or the vehicle forfeiture provision, right now there are forfeiture provisions and there would be a mandatory forfeiture if the conviction came at a time when there had been a suspension of the license for a previous DUI conviction. The interlock device would be mandated on repeat offenses. That would be the same there. Going next to page 14, this deals with the drivers license suspension. Again, I think that those provisions track with what I said earlier, the first offense would be 365 days and that could be reduced to four months, the second offense would be three years which could be reduced to 547 days depending on the compliances with the treatment programs after the evaluation, and a third offense would be for a straight 5 years. That really concludes the overview of what the bill does, I will tell you right now, after this bill came in, we wanted it to conform to the Tough Laws-State Roads program, but I believe you should amend that first offense, for a couple of reasons. I think you should take out those stiff penalties on the first offense, particularly where it increased beyond the jurisdiction of city's courts that have class B misdemeanor jurisdiction right now. A maximum penalty that could be imposed in the cities is a 30 day jail sentence, or \$500 fine. I don't think it's good for ND to have a carte blanche transfer of all those first offense cases into the district court. That would prevent that from happening. If you reduce that first offense down to that level. The second offense is more serious and I think there are some people that would argue that even on the second offense we don't have the kind of jail commitment that would require the state district court to get involved to impose jail time up to 1 year. That's something I think you should look at. I am not prepared to say to you today, that I back off of that. Because I think if we're going to seriously address this, maybe there are situations where you want the

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district court to be involved in those repeat offenses starting with the second offense. But you need to look at that and see what the impact of that would be on the system. The first offense, reduce it, get it back to the city courts, and they will deal with it there. There are other provisions that may cause some heartburn, particularly lawyers dealing with forfeiture. There are situations where you forfeit an automobile that is subject to dual ownership and maybe a lien, and maybe some of that needs to be worked out and further language crafted. We can work on that if you are interested in pursuing that in that direction. There are other provisions here that I know that you study and discuss and have changes on. We're here to work with you to do that. We don't believe one size fits all in this country. We do believe that North Dakota is unique, and we can proceed with the law we have making those changes that you think are necessary. We're willing to work with you. We should be proud in North Dakota of what we have done, we have some pretty good drunk driving laws in the state. I think we need some improvements and I think we need to really attack that repeat offender, and I think that this bill does that.

**Chairman Weisz:** On page 9, with the repeat offender, are you aware if there are any restriction on the Feds. on far as doing the graduated on the repeat offender part. I was somewhat under the impression that we had to have one size fits all on the repeat offender, as far as the graduated.

**Mr. Olson:** I am not aware of the federal requirements on that issue.

**Chairman Weisz:** Are you aware of what other states have, do they have this exact provision about repeat offenders.

**Mr. Olson:** I don't know about that, maybe Dianne Markut of Miller Brewing can answer that question. I know that this effort on graduated BAC is a recent effort. I know it's being proposed in other states, I don't know if it has been adopted.

*Salvatore Riccardi*  
Operator's Signature

*10/16/03*  
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**Rep. Thorpe:** Going through the fiscal note, I've seen the revenue increases predicted were considerable, and I can understand that if we raise the fines; but wouldn't there also be an impact on the correctional people, wouldn't there be a cost related to that for incarceration.

**Mr. Olson:** That's a good question, I think the answer would be that there would be an impact on corrections, either local jails or beyond. I don't know what that impact would be. It's hard to predict that.

**Rep. Thorpe:** Maybe we could find out.

**Chairman Weisz:** Thank you. Further testimony in support of HB 1439.

**Diane Markut, Government Affairs Program Manager for Miller Brewing Company:**

Support (see attached testimony).

**Chairman Weisz:** Are you aware of any other states that has a graduated on the repeat offender part.

**Ms. Markut:** Wisconsin was one of the states that did that, the threshold was .16

**Chairman Weisz:** Thank you for appearing.

**Keith Magnusson, Deputy Director of the Driver Vehicle Services, NDDOT:** We here in support of HB 1439. We do like the .08 provision that is in there, because that is one of the things we've talked about before, on safety. Our basic mission in the DOT, is safety in many different ways. This bill has the .08, the repeat offender aspect and has something new which we haven't had in the bill before, and we call them enhanced sanctions for higher BAC. On the question of the repeat offender, the federal mandate that we've adopted in North Dakota, except for the interlock device that you passed out a bill dealing with that. That's all the farther the federal mandates on repeat offender go. The concept that they are looking at in many states, and



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I think MN might have something now, is attacking the higher BAC's, which have become more a problem and have more sanctions for that. We don't you to downgrade something that we have now. We've worked long and hard in ND to be among the leaders in the nation and now some aspects we need to catch up again, but I think with discussion like this, we'll again be right up in the forefront.

**Chairman Welsz:** Part of the bill talks about the third or subsequent offense, and then it talks about greater than .17. I guess that is my question, that the repeat offender given a graduated or stiffer penalty.

**Mr. Magnusson:** Under the federal sanctions, the mandate you can as long as you don't go below the federal minimum and our law with the bill you passed you out on HB 1120, would meet the federal minimums. Anything you want to have is extra sanctions, is welcomed. Maybe this will be helpful in getting drunk drivers off the road and giving them the help they need.

**Chairman Welsz:** Thank you. Further testimony in support. Testimony in opposition to HB 1439.

**Janet Seaworth, Executive Director of the ND Beer Wholesalers Association:** Opposed (see attached testimony).

**Chairman Welsz:** Thank you. Further testimony in opposition.

**Brenda Neubauer, attorney:** I am appearing as an attorney in private practice, also as a concerned family member. I am speaking on a personal, painful note. I have personal feelings about the bill. I had an ex-spouse who would have been affected by this bill. The enhanced penalty provisions, effectively he would have lost his employment, the respect of our children, lost his insurance, my son has a serious medical condition, it would have affected my children in

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terms of insurance coverage, vehicle forfeiture. I mean, the impact of this bill is so huge, we're that component of this, what effect is this going to have on the family, the children. This bill is missing so much in it, we're targeting the drunk driver, but we're missing so many other things with this bill. The enhanced penalties go too far. A first offender with a .15 or greater can certainly learn the same lesson with the law that is in place right now. That alcohol evaluation and treatment can do the same thing that the penalties that we have in effect now, can do what is in this bill. This bill is wrong on so many levels. How are people going to pay the fines, how are they going to afford treatment, is Miller Brewing going to set up an account to fund the rehabilitation, treatment, etc. This bill will impact the families of the offenders, it is wrong.

**Chairman Welsz:** Thank you. Further testimony in opposition?

**Rep. Thorpe:** I appreciate that you've come before the committee and give your impassioned plea; however, I think this bill, whether it is an overreaction, I don't know, in our city that I represent, we had a horrendous crash in the past year that took the life of that young individual and I don't know whether it was alcohol or substance abuse or what, the car hit a tree and virtually split it in two, somewhere around 100 mph, and this is what we're struggling with. I think the whole committee is struggling. We somehow have to get through to these people, to let them know that this kind of behavior has to stop. We can't have it. Do you have any ideas that you would like to share with the committee on how to address this problem.

**Ms. Neubauer:** I appreciate that, and I do have concerns. I am not advocating drunk driving, by any means, it's a very painful for a family to go through, and that's an important part of the situation. My concern is that this bill is not going to deter those behaviors. They are still going to get in that vehicle and drive unless they get therapy and treatment. Treatment is the issue; not

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incarceration, not enhanced penalties, it's treatment. Therefore, when the judges make them follow through with the treatment, followed through with the evaluations, that's what I think is the answer.

**Rep. Ruby:** Another issue we have struggled with in the committee, is dealing with the suspension of licenses. It's really tough to enforce that. This also has a provision to stiffen that penalty up too, the hard part of that is enforcement. I'm sure you have had clients with suspended licenses drive to your office for a visit. There's another thing, we're looking for some answers on how to get to those problems.

**Ms. Neubauer:** The concern with the suspensions is that I think the suspensions we go backward from that. With stiffer penalties, they can't get to their work, or probation officers, etc. and that forces them to be in a bad situation, especially in rural communities. Extending suspension periods isn't the answer. They are going to be forced to drive at some point, with their license suspended. We need to give people their dignity back.

**Rep. Delmore:** I can understand the points you are making. But if we see these people, repeat offend, repeat offend, we are also seeing people die. Those are loved ones of all of us too. I care very much about people getting help, but what is the answer to the people who keep going on and on and we're not reaching now regardless of this bill.

**Ms. Neubauer:** I don't have the answers for everything. People who kill someone while driving under the influence, are put in prison; they aren't charged with DUI's. They are charged with serious offenses and looking at penitentiary time.

**Rep. Delmore:** I understand that, but what if they've already been picked up five times, and we've done nothing to deter them, regardless of the circumstances, and now somebody's dead,

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sure we'll get them then, but we haven't gotten them off the road when they should have been off the road.

**Ms. Neubauer:** Under a 5th offense, it would be a felony. That was changed last session. I am not seeing that. If they have a 5th offense, they are doing time. If I see a 3rd offense, they are doing mandatory time and generally getting treatment. I think this is going too far.

**Rep. Weiler:** I have a comment. You talked about the fines and penalties being so hard on these people, especially on the repeat offenders. I just think it is important to remember that it's not the fines or the penalties that got these people in the trouble that they're in. It's not the penalties that are the problem.

**Ms. Neubauer:** I acknowledge your comment. That's why I think we need the treatment. They would be better served.

**Chairman Weisz:** Thank you. Anyone else here in opposition.

**Bruce Haskell, District Judge in South Central District:** I am not in support or opposition, more neutral. The reason I am here is that in the 2001 legislature, the drug court bill was passed, which allowed for suspension of jail time that would otherwise be mandatory if a person was in the drug court program, that did have a sunset clause, and the drafters of this particular bill, in talking with Rep. Weiler, simply overlooked the fact that that was case, and adopted the 2003 language. I would urge that the drug court language be reinstated or reincluded. I would hope that you would do that because one of the concerns that has been addressed, is what do we do about these folks which are continually violating, and I think that the drug court program is a real good alternative. We've had good success, we've had 9 graduates of the program, 5 of those have been DUI people, in the drug court we take 3rd and above offenders. So these are people

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who have had repeat offenses. Those people have been out in the community and able to work, contribute back to society, rather than sitting in jail. In principle, I am not opposed to increased penalties. I would ask that you include language that allows for suspension of the mandatory sentences, if drug court is ordered. (See attached amendments) I'm glad to see that Mr. Olson would prefer that the first offense not be a class A misdemeanor, and I would hope that you would adopt that only because if you don't do that, then some of the judge positions that were eliminated in the past few years, would probably have to be put back in place. I would also point out that several of these require mandatory community service. There are some counties that I go to, that don't have community services available, so you might want to consider that when you are looking at that aspect of the bill.

**Chairman Welsz:** In conversation, the topic came up about the lower levels of BAC. The question was if it would be easier to go through the court system as an infraction or misdemeanor, could you comment on that from your perspective.

**Judge Haskell:** I'm sure it would be easier, but I think as a judge, I like to have the option of imposing some jail time if it is appropriate because there are cases where there have been accidents involved, where there is high BAC's, that sort of thing. As you know, an infraction would just allow for only a fine. I like the flexibility of being able to have the option of giving some jail time as appropriate.

**Chairman Welsz:** To follow up a little more, do you see that there is a greater tendency to go and say .1 or .12 whatever is a lower level, to plead it to a non-DUI, especially in smaller counties for example. They don't want to go through the cost and time of the trial.

Salvatore Riccardi  
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**Judge Haskell:** I can only speak for my own experience, I was a prosecutor for a number of years in Burleigh and Morton county before I became a judge. If it was a .11 or above, I would usually not knock it down, but if it was a .10 red on the .10, I would just because they brought in the toxicologist and argue to the jury that there was a margin of error. I can't speak for what other counties do. I would expect given what I see with the plea agreements that there is an informal policy that at a certain BAC above a .10, perhaps a .1112, that they would be willing to deal it to reckless driving or something like that.

**Rep. Headland:** Would it be your opinion that our law go far enough today.

**Judge Haskell:** That's a hard question to answer. My opinion is that there is enough room within the present law that judge's can do what is appropriate. I'm not convinced that increasing minimum mandatory penalties is the answer. I don't have a problem if you say well it's a felony now, to give me that flexibility to go higher if I want to, but when I think you start putting low end things on it, you start punishing people that may be aren't necessarily the target of your approach. That's part of the reason that our drug court is for 3rd and 4th offenders, because typically those are the minority, but they're the most serious offenders who we want to get off the streets. I think there is enough room within the present law to do what we need to do, but it wouldn't bother me a lot if there were some upper levels.

**Chairman Welsz:** Thank you. Any further testimony in opposition?

**Corey Schlinger, Drug Court Supervisor, DOCR:** I was prepared to testify in opposition of HB 1439, but I knew of Mr. Olson's proposed amendments and Judge Haskell's testimony has cleared up some of the matters that we were concerned about (see attached testimony).

Richard Costa  
Operator's Signature

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**Chairman Weisz:** Thank you. Anyone else in opposition to HB 1439, we will close the hearing.

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439b

House Transportation Committee

☐ Conference Committee

Hearing Date February 13, 2003

Tape Number	Side A	Side B	Meter #
3	x		10.6 to
Committee Clerk Signature <i>Lauren B. Zide</i>			

Minutes:

Rep. Weisz, Chairman opened the discussion for action on HB 1439. Amendments were distributed. Rep. Weisz explained the 1st offense BAC 0.08 to 0.10 no administrative penalty and the criminal infraction 0.08 to 0.10 \$100 fine to \$500 and 2 points. Then the Chairman said that the reason for this reconsideration they received some additional information from the DOT and that the bill as it stood would not meet the intended results. He then continued to explain that for the 1st offense for a BAC 0.10 to 0.16 stays the same as current law but that 0.17 and greater was doubling -- \$500 and was a class B misdemeanor. He then went on to explain second and third offenses and the consequences. The goal was not to be too heavy on the first time offender at the lower BAC but to really clamp down on the repeat offenders. following discussion. Rep. Price moved to approve the amendments which were L C number ---.0102

Rep. Delmore seconded the motion. The Motion carried on a voice vote.

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Rep. Weisz then went on to discuss and introduce several other amendments.

Those amendments were approved by a voice vote.

Rep. Hawken moved a 'Do Pass as Amended' motion. Rep. Price seconded the motion. On a roll call vote the motion carried 9 Ayes 4 Nays 0 Absent.

Rep. Hawken was designated to carry HB 1439 on the floor.

End of record ( 51.2 )

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**FISCAL NOTE**  
Requested by Legislative Council  
04/16/2003

Amendment to: HB 1439

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures				\$20,000		
Appropriations				\$20,000		

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The amendment removes all revenue from previous bill drafts and fiscal notes.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Computer software would need to be upgraded to handle the changes in suspension/dates of convictions, etc. The programming charges are approximately \$15,000. An additional \$5,000 for printing of forms, manuals, and public information efforts is included.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The proposed budget for the biennium did not include this proposed legislation. Additional appropriation would be necessary to accommodate the change.

Name:	Linda Mathern	Agency:	NDDOT
Phone Number:	328-4359	Date Prepared:	04/16/2003

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**FISCAL NOTE**  
Requested by Legislative Council  
03/25/2003

Amendment to: HB 1439

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$1,305,000		\$1,305,000
Expenditures				\$20,000		
Appropriations				\$20,000		

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill addresses several issues in regard to driving while under the influence of alcohol and/or drugs. It differentiates how fees, jail times, and suspension times are assessed based on 1st, 2nd, 3rd, or subsequent offenses, mainly based on stricter sanctions for a BAC of .16% or above. The current First Engrossment with Senate Amendments removes the waiver of suspension (infraction) for those violators of the law who are between .08%-.10% BAC and subsequent 2-point suspension; again changes crime classifications; removes the proposed increased speed limit; and further amends section 39-20-04 by increasing the periods of revocation for refusal to submit to testing to 3 years (was 2) for 2nd offense and 5 years (was 3) for a 3rd or subsequent offense. It also amends subsection 1 of section 39-20-04.1 by changing suspension times in relation to BAC results.

The First Engrossment with Senate Amendments further removes the state fiscal impact of the .08% BAC previously amended under the First Engrossment. If passed, there will be no loss of federal highway funds because of the amendments now under consideration.

The NDDOT has no information on the present jail times assessed per individual, per conviction. Therefore, this NDDOT fiscal note does not include any additional revenue and/or expenditures relative to those aspects of HB1439. We also do not know the impact on the court system in relation to the new crime classifications HB1439 would impose.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue figures are based on ESTIMATED increased fees assessed for 1st, 2nd, 3rd & subsequent offenses in relation to BAC results. These figures are estimates only (see attached) as we do not have any statistics for BAC levels per each offense. We are estimating based on 50% less than .16% BAC and 50% 16% + BAC.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Computer software would need to be upgraded to handle the changes in suspension/dates of convictions, etc. The

programming charges are approximately \$15,000. An additional \$5,000 for printing of forms, manuals, and public information efforts is included.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

The proposed budget for the biennium did not include this proposed legislation. Additional appropriation would be necessary to accommodate the change.

<b>Name:</b>	Linda Mathern	<b>Agency:</b>	NDDOT
<b>Phone Number:</b>	328-4359	<b>Date Prepared:</b>	03/26/2003

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10/16/03  
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**FISCAL NOTE**  
Requested by Legislative Council  
02/19/2003

Amendment to: HB 1439

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$1,331,700		\$1,331,700
Expenditures				\$50,000		
Appropriations				\$50,000		

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

This bill addresses several issues in regard to driving while under the influence of alcohol and/or drugs. It differentiates how fees, jail times, and suspension times are assessed based on 1st, 2nd, 3rd, or subsequent offenses; waives suspensions for those violators of the law who are between .08%-.10% BAC; changes crime classifications; increases the speed limit from 70 to 75 miles per hour on access-controlled, paved and divided multilane highways; and finally adds 2 points to a license for a DUI of less than .11% BAC.

Should this bill pass, not providing for a .08% BAC minimum, the state fiscal impact is minimal but the federal dollars the state will not receive are quite dramatic. Beginning in 2004, the penalty starts at 2% of certain federal highway funds and grows 2% each year through 2007. After that, the annual loss is 8%. The loss of federal highway funds is estimated at \$2.6 million in 2004, \$5.7 million in 2005, \$8.5 million in 2006, and \$11.3 million in 2007, and thereafter.

The NDDOT has no information on the present jail times assessed per individual, per conviction. Therefore, this NDDOT fiscal note does not include any additional revenue and/or expenditures relative to those aspects of HB1439. We also do not know the impact on the court system in relation to the new crime classifications HB1439 would impose.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The revenue figures are based on ESTIMATED increased fees assessed for 1st, 2nd, 3rd, 4th, & subsequent offenses in relation to BAC results. These figures are estimates only as we do not have any statistics for BAC levels per each offense.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

Computer software would need to be upgraded to handle the changes in suspension/dates of convictions, etc. The programming charges are approximately \$30,000. An additional \$10,000 for printing of forms, manuals, and public information efforts is included.

Based on the speed limit change from 70 to 75 mph, the state would spend \$10,000 for changing signs on the Interstate.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The proposed budget for the biennium did not include this proposed legislation. Additional appropriation would be necessary to accommodate the change.

Name:	Linda Mathern	Agency:	NDDOT
Phone Number:	328-4359	Date Prepared:	03/05/2003

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10/16/03  
Date

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**FISCAL NOTE**  
Requested by Legislative Council  
01/21/2003

Bill/Resolution No.: HB 1439

**1A. State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				\$1,350,600		\$1,350,600
Expenditures				\$47,638		
Appropriations				\$47,638		

**1B. County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2. Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

This bill addresses several issues in regard to driving while under the influence of alcohol and/or drugs. Most notably, it reduces the BAC from the present .10% to .08%; assesses a \$100 surcharge for each violation of section 39-08-01 or chapter 39-20, which shall be deposited in a special fund, subject to legislative appropriation, to purchase law enforcement equipment; increases fines, with the addition of more stringent fines based on the violators' level of BAC; and adds that any money collected from the seizure, forfeiture, and sale or disposition of motor vehicles for violations under this section shall be deposited in a special fund for alcohol/drug treatment, rehabilitation, prevention, and education programs.

Although the state fiscal impact is minimal should .08% BAC be passed (HB1161 specifically addresses .08% BAC passage), the federal dollars the state will not receive are quite dramatic if .08% BAC legislation is not enacted. Beginning in 2004, the penalty starts at 2% of certain federal highway funds and grows 2% each year through 2007. After that, the annual loss is 8%. The loss of federal highway funds is estimated at \$2.8 million in 2004, \$5.7 million in 2005, \$8.5 million in 2006, and \$11.3 million in 2007, and thereafter.

The NDDOT has no information on money collected annually from the seizure, forfeiture, and sale or disposition of motor vehicles, or the present jail times assessed per individual, per conviction. Therefore, this NDDOT fiscal note does not include any additional revenue and/or expenditures relative to those aspects of HB1439.

**3. State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

**A. Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

The revenue figures are based on the following

A. Passage of the \$100 surcharge, for either violation of section 39-08-01 or 39-20, amounts to \$800,000 per biennium (based on past history, the NDDOT processes approximately 4,000 convictions per year, additional \$100 per conviction).

B. During 2001, there were a total of 2,753 convictions in violation of 39-08-01, averaging \$459 per fine, per conviction. Assuming an average additional fine of \$100 per DUI offense with an average of 2,753 convictions per year, the additional revenue generated from this provision would be \$275,300 per year (\$550,600 per biennium).

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**B. Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

Computer software would need to be upgraded to handle the change in suspension/dates of convictions and new alcohol content change (.08% BAC). The programming charges are \$29,638 and \$8,000, respectively. An additional \$10,000 for printing of forms, manuals, and public information efforts is included.

**C. Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

The proposed budget for the biennium did not include this proposed legislation. Additional appropriation would be necessary to accommodate the change.

<b>Name:</b>	Linda Mathern for Marsha Lembke	<b>Agency:</b>	NDDOT
<b>Phone Number:</b>	328-4359	<b>Date Prepared:</b>	01/31/2003

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10/16/03  
Date



30663.0104  
Title.0300

Adopted by the Transportation Committee  
February 13, 2003

VR  
2/18/03  
1088

HOUSE AMENDMENTS TO HB 1439 htrn 2-18-03

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new paragraph to subdivision b of subsection 3 of section 39-06.1-10; to amend and reenact subsection 7 of section 39-06.1-10, sections 39-08-01 and 39-09-02, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to speed limits and consequences for driving while under the influence; and to provide a penalty.

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

**SECTION 1.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

Driving while under 2 points  
the influence, in violation of  
39-08-01, with less than  
eleven one-hundredths of one  
percent by weight

**SECTION 2. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight. The director shall waive the suspension if the alcohol concentration was under eleven one-hundredths of one percent by weight and the person was not operating a commercial motor vehicle.
  - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation is for an alcohol concentration of under sixteen one-hundredths of one percent by weight.
  - d. Two years if the operator's record shows the person has at least twice once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation was for an alcohol concentration of at least eight one-hundredths of one

La Costa Richard  
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10/16/03  
Date

percent by weight and under sixteen one-hundredths of one percent by weight.

- g. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation is for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.

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

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

1. 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:
  - a. That person has an alcohol concentration of at least ten 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.
  - b. That person is under the influence of intoxicating liquor.
  - c. 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.
  - d. 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.

The fact that 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, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. 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.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.

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4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
  - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. 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.
  - f. 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 subsection.
  - g. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

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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 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.

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

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

1. 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:
  - a. That person has an alcohol concentration of at least ~~ten~~ 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.
  - b. That person is under the influence of intoxicating liquor.
  - c. 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.
  - d. 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.

The fact that 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, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of an infraction if the alcohol concentration is at least eight one-hundredths of one percent by weight and under eleven one-hundredths of one percent by weight for a first offense in a five-year period, of a class B misdemeanor if the alcohol concentration is at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for the first or second offense or if the alcohol concentration is at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for a second offense in a five-year period, of a class A misdemeanor if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for the first or the second offense within a five-year period or the alcohol concentration is at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for a third or subsequent offense in a five-year period, of a class A misdemeanor for the fourth offense in a

~~seven-year period~~, and of a class C felony if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for a fifth third or subsequent offense in a seven-year five-year period. The minimum penalty for violating this section is as provided in subsection 4. 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.

3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
  - a. For a first offense, if the alcohol concentration was at at least eight one-hundredths of one percent by weight and under eleven one-hundredths of one percent by weight the sentence must include both a fine of at least one hundred dollars or if the alcohol concentration was at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight a fine of at least two hundred fifty dollars, if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least five hundred dollars and in all cases an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; if the alcohol concentration was at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight, a fine of at least five hundred dollars or if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; if the alcohol concentration was at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight, a fine of at least one thousand dollars or if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of ~~one~~ two thousand dollars.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02.

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- f. 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 subsection.
  - g. 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 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.
5. As used in subdivision b of subsection 4, 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 in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

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

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

- 1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it presumably is lawful for the driver of a vehicle to drive the same at a speed not exceeding:
  - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.
  - b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
  - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.
  - d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].

- e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
  - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise, unless otherwise permitted, restricted, or required by conditions.
  - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed, and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
  - h. ~~Seventy~~ Seventy-five miles [~~112.65~~ 120.70 kilometers] an hour on access-controlled, paved and divided, multilane Interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
  3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
  4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

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

1. After the receipt of a person's operator's license, if taken under section 39-20-03.1 or 39-20-03.2, and the certified report of a law enforcement officer and if no written request for hearing has been received from the arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:
  - a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight. The director shall waive the suspension if the alcohol concentration was under eleven one-hundredths of one percent by weight and the person was not operating a commercial motor vehicle.



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- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.
- c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under sixteen one-hundredths of one percent by weight.
- e. d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has at least twice previously once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration at least sixteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under sixteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight."

Renumber accordingly

Al Costa Richardson  
Operator's Signature

10/16/03  
Date



Date: 2/13/03  
Roll Call Vote #: \_\_\_\_\_

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1439

House TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30636.100

Action Taken Do Pass as Amended

Motion Made By Rep. Hawken Seconded By Rep. Price

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	✓		Lois Delmore	✓	
Kathy Hawken - Vice Chairman	✓		Arlo E. Schmidt		✓
LeRoy G. Bernstein	✓		Elwood Thorpe		✓
Mark A. Dosch	✓		Steven L. Zaiser		✓
Pat Galvin	✓				
Craig Headland		✓			
Clara Sue Price	✓				
Dan J. Ruby	✓				
Dave Weiler	✓				

Total Yes 9 No 4

Absent 0

Floor Assignment Rep. Hawken

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)  
February 18, 2003 9:48 a.m.

Module No: HR-31-3052  
Carrier: Hawken  
Insert LC: 30663.0104 Title: .0300

**REPORT OF STANDING COMMITTEE**

**HB 1439: Transportation Committee (Rep. Welsz, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (9 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1439 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new paragraph to subdivision b of subsection 3 of section 39-06.1-10; to amend and reenact subsection 7 of section 39-06.1-10, sections 39-08-01 and 39-09-02, and subsection 1 of section 39-20-04.1 of the North Dakota Century Code, relating to speed limits and consequences for driving while under the influence; and to provide a penalty.

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

**SECTION 1.** A new paragraph to subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is created and enacted as follows:

Driving while under the influence, in violation of 39-08-01, with less than eleven one-hundredths of one percent by weight 2 points

**SECTION 2. AMENDMENT.** Subsection 7 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

7. The period of suspension imposed for a violation of section 39-08-01 or equivalent ordinance is:
  - a. Ninety-one days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight. The director shall waive the suspension if the alcohol concentration was under eleven one-hundredths of one percent by weight and the person was not operating a commercial motor vehicle.
  - b. One hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.
  - c. Three hundred sixty-five days if the operator's record shows the person has once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation is for an alcohol concentration of under sixteen one-hundredths of one percent by weight.
  - d. Two years if the operator's record shows the person has at least twice once violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight or if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within

(2) DESK, (3) COMM

Page No. 1

HR-31-3052

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Salvatore Riccio  
Operator's Signature

10/16/03  
Date

the five years preceding the last violation and the last violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight.

- e. Three years if the operator's record shows the person has at least twice violated section 39-08-01 or equivalent ordinance within the five years preceding the last violation and the last violation is for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.

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

**39-08-01. (Effective through July 31, 2003) Persons under the Influence of Intoxicating Liquor or any other drugs or substances not to operate vehicle - Penalty.**

1. 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:
  - a. That person has an alcohol concentration of at least ten 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.
  - b. That person is under the influence of intoxicating liquor.
  - c. 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.
  - d. 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.

The fact that 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, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a five-year period, of a class A misdemeanor for a third offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony for a fifth or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. 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.
3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or

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revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.

4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program.
  - a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; a fine of at least five hundred dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; a fine of one thousand dollars; and an order for addiction evaluation by an appropriate licensed treatment program.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. 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.

- f. 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 subsection.
  - g. 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 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.
5. As used in subdivision b of subsection 4, 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 in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

**(Effective after July 31, 2003) Persons under the Influence of Intoxicating Liquor or any other drugs or substances not to operate vehicle - Penalty.**

1. 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:
  - a. That person has an alcohol concentration of at least ~~ten~~ 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.
  - b. That person is under the influence of intoxicating liquor.
  - c. 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.
  - d. 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.

The fact that 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, unless a drug which predominately caused impairment was used only as directed or cautioned by a practitioner who legally prescribed or dispensed the drug to that person.

2. A person violating this section or equivalent ordinance is guilty of an infraction if the alcohol concentration is at least eight one-hundredths of one percent by weight and under eleven one-hundredths of one percent by weight for a first offense in a five-year period, of a class B misdemeanor if

the alcohol concentration is at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for the first or second offense or if the alcohol concentration is at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for a second offense in a five-year period, of a class A misdemeanor if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for the first or the second offense within a five-year period or the alcohol concentration is at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight for a third or subsequent offense in a five-year period, of a class A misdemeanor for the fourth offense in a seven-year period, and of a class C felony if the alcohol concentration is at least sixteen one-hundredths of one percent by weight for a third or subsequent offense in a seven-year period. The minimum penalty for violating this section is as provided in subsection 4. 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.

3. Upon conviction, the court may order the motor vehicle number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded for the duration of the period of suspension or revocation of the offender's driving privilege by the licensing authority. The impounded number plates must be sent to the director who must retain them for the period of suspension or revocation, subject to their disposition by the court.
4. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.
  - a. For a first offense, if the alcohol concentration was at at least eight one-hundredths of one percent by weight and under eleven one-hundredths of one percent by weight the sentence must include both a fine of at least one hundred dollars or if the alcohol concentration was at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight a fine of at least two hundred fifty dollars, if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least five hundred dollars and in all cases an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - b. For a second offense within five years, the sentence must include at least five days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively, or thirty days' community service; if the alcohol concentration was at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight, a fine of at least five hundred dollars or if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least one thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.
  - c. For a third offense within five years, the sentence must include at least sixty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively; if the alcohol concentration was at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent

by weight, a fine of at least one thousand dollars or if the alcohol concentration was at least sixteen one-hundredths of one percent by weight a fine of at least two thousand dollars; and an order for addiction evaluation by an appropriate licensed addiction treatment program.

- d. For a fourth or subsequent offense within seven years, the sentence must include one hundred eighty days' imprisonment or placement in a minimum security facility, of which forty-eight hours must be served consecutively and a fine of ~~one~~ two thousand dollars.
  - e. The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02.
  - f. 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 subsection.
  - g. 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 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.
5. As used in subdivision b of subsection 4, 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 in which the defendant is tested at least twice daily for the consumption of alcohol. The defendant shall defray all costs associated with the electronic home detention. This subsection does not apply to individuals committed to or under the supervision and management of the department of corrections and rehabilitation.

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

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

- 1. Subject to the provisions of section 39-09-01 and except in those instances where a lower speed is specified in this chapter, it is presumed to be lawful for the driver of a vehicle to drive the same at a speed not exceeding:
  - a. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] of a grade crossing of any steam, electric, or street railway when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last two hundred feet [60.96 meters] of the driver's approach to such crossing, the driver does not have a clear and uninterrupted view of such railway crossing and of any traffic on such railway for a distance of four hundred feet [121.92 meters] in each direction from such crossing.



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- b. Twenty miles [32.19 kilometers] an hour when passing a school during school recess or while children are going to or leaving school during opening or closing hours, unless a lower speed is designated or posted by local authorities.
  - c. Twenty miles [32.19 kilometers] an hour when approaching within fifty feet [15.24 meters] and in traversing an intersection of highways when the driver's view is obstructed. A driver's view is deemed to be obstructed when at any time during the last fifty feet [15.24 meters] of the driver's approach to such intersection, the driver does not have a clear and uninterrupted view of such intersection and of the traffic upon all of the highways entering such intersection for a distance of two hundred feet [60.96 meters] from such intersection.
  - d. Twenty miles [32.19 kilometers] an hour when the driver's view of the highway ahead is obstructed within a distance of one hundred feet [30.48 meters].
  - e. Twenty-five miles [40.23 kilometers] an hour on any highway in a business district or in a residence district or in a public park, unless a different speed is designated and posted by local authorities.
  - f. Fifty-five miles [88.51 kilometers] an hour on gravel, dirt, or loose surface highways, and on paved two-lane highways if there is no speed limit posted or if within the time period of one-half hour after sunset to one-half hour before sunrise, unless otherwise permitted, restricted, or required by conditions.
  - g. Sixty-five miles [104.61 kilometers] an hour on paved two-lane highways if within the time period of one-half hour before sunrise to one-half hour after sunset and if posted for that speed, and on paved and divided multilane highways, unless otherwise permitted, restricted, or required by conditions.
  - h. ~~Seventy~~ Seventy-five miles [~~112.65~~ 120.70 kilometers] an hour on access-controlled, paved and divided, multilane interstate highways, unless otherwise permitted, restricted, or required by conditions.
2. The director may designate and post special areas of state highways where lower speed limits apply.
  3. Except as provided by law, it is unlawful for any person to drive a vehicle upon a highway at a speed that is unsafe or at a speed exceeding the speed limit prescribed by law or established pursuant to law.
  4. In charging a violation of the provisions of this section, the complaint must specify the speed at which the defendant is alleged to have driven and the speed which this section prescribes is prima facie lawful at the time and place of the alleged offense.

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

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

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arrested person under section 39-20-05, or if that hearing is requested and the findings, conclusion, and decision from the hearing confirm that the law enforcement officer had reasonable grounds to arrest the person and test results show that the arrested person was driving or in physical control of a vehicle while having an alcohol concentration of at least ten one-hundredths of one percent by weight or, with respect to a person under twenty-one years of age, an alcohol concentration of at least two one-hundredths of one percent by weight at the time of the performance of a test within two hours after driving or being in physical control of a motor vehicle, the director shall suspend the person's operator's license as follows:

- a. For ninety-one days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has not previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has not previously been suspended or revoked under this chapter and the violation was for an alcohol concentration of at least eight one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight. The director shall waive the suspension if the alcohol concentration was under eleven one-hundredths of one percent by weight and the person was not operating a commercial motor vehicle.
- b. For one hundred eighty days if the operator's record shows the person has not violated section 39-08-01 or equivalent ordinance within five years preceding the last violation and the last violation was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight.
- c. For three hundred sixty-five days if the person's driving record shows that, within the five years preceding the date of the arrest, the person has once previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has once previously been suspended or revoked under this chapter with the last violation or suspension for an alcohol concentration under sixteen one-hundredths of one percent by weight.
- e. d. For two years if the person's driving record shows that within the five years preceding the date of the arrest, the person's operator's license has ~~at least twice previously~~ once been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration at least sixteen one-hundredths of one percent by weight or if the person's driving record shows that within the five years preceding the date of arrest, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests with the last violation or suspension for an alcohol concentration of under sixteen one-hundredths of one percent by weight.
- e. For three years if the operator's record shows that within five years preceding the date of the arrest, the person's operator's license has

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at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination thereof, and the suspensions, revocations, or denials resulted from at least two separate arrests and the last violation or suspension was for an alcohol concentration of at least sixteen one-hundredths of one percent by weight."

Renumber accordingly

(2) DESK, (3) COMM

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Operator's Signature

La Costa Richard

Date

10/16/03

2003 SENATE TRANSPORTATION

HB 1439

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Richard Costa  
Operator's Signature

10/16/03  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-14-03

Tape Number	Side A	Side B	Meter #
1	X		40-5880
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

**Chairman Senator Thomas Trenbeath** opened the hearing on HB 1439 relating to speed limits and consequences for driving while under the influence and to provide a penalty.

**Representative Dave Weiler** (District 30) Introduced HB 1439. (See attached chart HB 1439.)

Feels that the graduated blood alcohol content is a good concept. The higher the blood alcohol level is the higher the penalty is, especially at the second, third, and subsequent offenses.

**Senator Trenbeath** asked if the bill, as it stands, is acceptable for federal funding purposes.

**Representative Weiler** responded that he had just received an e-mail stating that HB 1439 is not compliant with all the requirements of Section 163. (See attached e-mail.)

**Senator Trenbeath** asked if amendments expected to be proposed would make this bill compliant.

**Representative Weiler** said that he wasn't sure. He felt there were others that could answer the question better.

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**John Olson** (Miller Brewing Company) Reported that their proposed amendments would not make this bill compliant with the federal requirements. Miller Brewing has no position on the .08 or the 75 mph speed limit. Addressed concerns from the ND Peace Officers Association.

1.) They ask that, if the 75 mph speed limit is adopted, the fines and points they have presented be adopted also. 2.) They feel that the penalties should be the same for violations whether it is .08 or .10 and above, at least for administrative penalties. This bill helps get the repeat offenders off the road. Miller Brewing has encouraged state legislatures to take an active role in increasing the regulation and application of sanctions in the area of drunk driving. See attachment, "Comparison of North Dakota DUI Legislation to Model Road Safe Legislation".

One provision in the bill needs to be addressed, the repeat offender that gets caught and refuses the test. The attached proposed amendment (.0305) addresses that issue.

**Representative Robin Weisz** (District 14) Explained that the House Transportation Committee felt it was necessary to go after the higher BAC level both in first time and repeat offenders. They felt they had put together a good compromise dealing with the .08 issue. Although the Federal Department of Transportation looked at it as going backward, North Dakota is still stronger than a lot of states in the area of penalties.

**Senator Tollefson** (District 38) Supports HB 1439. Introduced several suggested amendments on behalf of a constituent. (See attached amendments .0301, .0302, .0303, and .0304)

**Mr. Tom Hallamyer** Spoke in favor of HB 1439. (Meter 2200) (See attached pictures and charts "ND/Out of State Driver Involvement" and "Average Economic Costs of ND Traffic Crashes") Gave some personal history related to how drunk drivers have affected his family. He was frustrated that drunk drivers get their driving privileges back. The problem with the existing

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Senate Transportation Committee

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law is the word "may". If people are not responsible enough to know when and when not to drive a car, then he feels they don't deserve to have the car. The court "may" or "may not" seize their vehicle and the "may not" is not working. He feels it is just an idle threat and the car should be taken away.

**Senator Nething** asked if he had an opportunity to testify in the House.

**Mr. Hallamyer** responded that he did not.

**Libby Volk** (Student in support of HB 1439) Feels that stiffening the consequences for drunk drivers will result in fewer people taking the chance of driving after they have had a few drinks. It seems logical that the results of this bill will help get more people into treatment.

**Keith Magnusson** (ND DOT) Spoke in opposition to HB 1439. (Meter 3920) Not opposed to all parts of HB 1439. It was originally a very comprehensive bill. Changes made by the House on lowering things were well intentioned but they actually went backwards. Handed out copies of the implementing regulations for .08. (See attached Proposed Rules.) Referred to the e-mail mentioned earlier by Representative Weiler. The concern is with lessening penalties already in place. They are saying that HB 1161, standing on its own as a .08 bill, will comply with the federal law and federal regulations. HB 1439 as drafted will not. Urged the committee to take out parts of HB 1439 that do not comply with the federal law.

**Senator Trenbeath** asked if he would get an official letter confirming the e-mail.

**Keith Magnusson** said he would.

**Senator Trenbeath** asked if he also could nutshell what he thinks could be done with the bill to make it compliant.

**Keith Magnusson** replied that he would.

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**Senator Nething** asked what part of the bill he was opposed to.

**Keith Magnusson** replied that they are opposed to the portions that are backtracking. He is talking about the bill as amended in the House.

(Meter 4719) Discussion on the parts that are backtracking which would be waving a suspension for a first time offense and lesser penalties. The feds are saying that .08 is being treated differently than the normal DUI offense right now which is a .10. This would be fixed by making .08 the same classification and ramifications of the .10 presently. There is no objection to the increased penalties for blood alcohol content.

**Senator Trenbeath** asked if this bill, at least from the .11 up, would qualify for a graduated penalty bill.

**Keith Magnusson** believes it would.

**April Freeman** and **Val Schultz** (SADD) Testified in opposition to HB 1439. (Meter 5000)

**Deb Jevne** (MADD) See attached testimony in opposition of HB 1439.

**Keith Sorenson** (ND EMS Association) The EMS has a problem with raising the speed limit.

The second leading indicator of deaths in ND is speed.

The hearing on HB 1439 was closed.

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439

Senate Transportation Committee

☐ Conference Committee

Hearing Date 3-20-03

Tape Number	Side A	Side B	Meter #
2		X	3830-end
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

**Chairman Senator Thomas Trenbeath** opened HB 1439 for discussion.

**Senator Trenbeath** called on John Olson to explain the amendment by Representative Weiler.

**John Olson** said that both amendments .0306 and .0307 were prepared at his request with the agreement of both Representative Weisz and Representative Weiler. One amendment removes everything about .08 out of the bill. What is left is the graduated and he asked that the previously proposed amendment be adopted relating to upping the ante for refusals on second and subsequent offenses.

**Senator Trenbeath** said that, as he sees it, .0306 just takes the speed limit portion out of the bill. He asked John Olson to tell them what .0305 says.

**John Olson** responded that on any offense right now for drunk driving, if a person is charged and refuses the test, within 30 days he can sign an affidavit saying he is guilty and file it. As long as he hasn't requested an administrative hearing, he can get the sanction for the refusal, that's one



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year, set aside. Even on subsequent offenses the whole refusal would be not sanctioned. This amendment leaves that first offense in place but after that the refusal ante goes up. That means a person can't go in on subsequent offenses and have the benefit. There's no cure beyond the first offense. What they are trying to do is to make sure that people are not sitting better with refusals than they would be if they have BAC's.

**Senator Trenbeath** asked how they would be doing better.

**John Olson** clarified that this is enhancement for the high BAC's. The test is needed to punish the higher BAC's. He thinks this is an area, particularly for chronic repeat offenders, that can really be addressed.

**Senator Trenbeath** asked for clarification that .0307 makes an .08 violation a Class B misdemeanor and everything else folds into the formula.

**John Olson** said the .0307 is supposed to take out the .08 completely.

(Meter 4580) Discussion to the effect that it goes back to the law as it was except that it enhances penalties for increased BAC's over .10. The enhancement wouldn't start until .16.

**Senator Trenbeath** disagreed that there should be a graduated penalty at this time. If the .08 is adopted he didn't think there should be a graduated penalty. The Federal Government sets up certain criteria that they want to see happen with respect to driving under the influence of alcohol. States must adopt any 5 of the 7 in order to comply. North Dakota has adopted 5. He wasn't sure that this complies with the criteria for the program for drivers with higher BAC.

**Senator Nething** moved to adopt amendment .0307. No second.

**Senator Trenbeath** didn't think this bill in its present form was good for North Dakota. He said it was a workable bill, but it doesn't do us any good. He felt it would do harm if it was passed in

*Richard*  
Operator's Signature

10/16/03  
Date

Page 3  
Senate Transportation Committee  
Bill/Resolution Number HB 1439  
Hearing Date 3-20-03

its present form. Even though the .08 was passed, this makes the penalty for .08 so slight that the Federal Government will say that we didn't pass a .08.

Senator Nething asked if that was the case with the amendment, too.

Senator Trenbeath said no.

Senator Espegard moved a **Do Not Pass** on HB 1439. Seconded by Senator Mutch.

Roll call vote. 4-1-1. Floor carrier is Senator Trenbeath.

Yolanda Richardson  
Operator's Signature

10/16/03  
Date

30663.0301  
Title.

Prepared by the Legislative Council staff for  
Senator Tollefson  
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 2, after the first "39-06.1-10" Insert "of the North Dakota Century Code, relating to point demerits"

Page 1, line 3, after the comma Insert "subsection 1 of section 39-20-03.2,"

Page 10, after line 26, Insert:

**"SECTION 5. AMENDMENT.** Subsection 1 of section 39-20-03.2 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Without~~ Before taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a notification of the test results and a temporary operator's permit extending nonresident operating privileges in this state for twenty-five days from the date of issuance or until earlier terminated by the decision of a hearing officer under section 39-20-05. The temporary permit must be signed and dated by the officer and serves as the director's official notification to the person of the director's intent to revoke, suspend, or deny driving privileges in this state, and of the hearing procedures under this chapter. The officer shall send the out-of-state operator's license to the licensing authority in the state of issuance."

Renumber accordingly

Ja Costa Rickford  
Operator's Signature

10/16/03  
Date

30663.0302  
Title.

Prepared by the Legislative Council staff for  
Senator Tollefson  
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 2, after the first "39-06.1-10" Insert "of the North Dakota Century Code, relating to point demerits" and after "reenact" Insert "subsection 3 of section 39-06-03,"

Page 1, after line 6, Insert:

**"SECTION 1. AMENDMENT.** Subsection 3 of section 39-06-03 of the North Dakota Century Code is amended and reenacted as follows:

3. To any ~~person~~ individual who is ~~an~~ a habitual drunkard, or is ~~an~~ a habitual user of narcotic drugs, or is ~~an~~ a habitual user of any other drug to a degree which renders the ~~person~~ individual incapable of safely driving a motor vehicle. A habitual drunkard includes an individual who is convicted of any alcohol-related offense and has not provided the director with adequate proof of the removal of the habit which may include satisfactory completion of alcohol treatment.

Renumber accordingly

30663.0303  
Title.

Prepared by the Legislative Council staff for  
Senator Tollefson  
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 2, after the first "39-06.1-10" insert "of the North Dakota Century Code, relating to point demerits"

Page 1, line 3, after "39-08-01" insert ", 39-08-01.3,"

Page 9, after line 4, Insert:

**"SECTION 4. AMENDMENT.** Section 39-08-01.3 of the North Dakota Century Code is amended and reenacted as follows:

**39-08-01.3. Alcohol-related traffic offenses - Ignition interlock devices and the seizure - Seizure, forfeiture, and sale of motor vehicles.** A motor vehicle owned and operated by a person upon a highway or upon public or private areas to which the public has a right of access for vehicular use ~~may~~ must be seized, forfeited, and sold or otherwise disposed of pursuant to an order of the court at the time of sentencing if the person is in violation of section 39-08-01 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 five years preceding the violation. The court may also require that an ignition interlock device be installed in the person's vehicle for a period of time that the court deems appropriate."

Renumber accordingly

30663.0304  
Title.

Prepared by the Legislative Council staff for  
Senator Tollefson  
March 4, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 2, after the first "39-06.1-10" insert "of the North Dakota Century Code, relating to point demerits" and after "reenact" insert "subsection 3 of section 39-06-42,"

Page 1, after line 6, insert:

**"SECTION 1. AMENDMENT.** Subsection 3 of section 39-06-42 of the North Dakota Century Code is amended and reenacted as follows:

3. In addition to any other punishment imposed, the court ~~may~~ shall order the number plates of the motor vehicle owned and operated by the offender at the time of the offense to be impounded by the sheriff for the duration of the period of suspension or revocation. When a period of suspension has been extended under subsection 5 of section 39-06-17, the court may order the number plates to be impounded in accordance with this subsection. The impounded number plates may be released, upon order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title to the motor vehicle issued by the director."

Page 7, line 9, overstrike "may" and insert immediately thereafter "shall"

Page 9, after line 4, insert:

- "6. Upon conviction, the court shall order the defendant to immediately surrender any temporary operator's permit and shall send the permit with the date of surrender to the department."

Renumber accordingly

30663.0305  
Title.

Prepared by the Legislative Council staff for  
Representative Welsz  
March 13, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 3, replace the first "and" with a comma and after "39-09-02" insert ", and 39-20-04"

Page 10, after line 26, insert:

**"SECTION 5. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:
  - a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.

- b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - c. ~~Three~~ Five years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof~~ of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
- a. ~~No~~ An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance with an alcohol concentration of at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight within twenty-five days after the temporary operator's permit is issued;
    - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
    - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance with an alcohol concentration of at least eleven one-hundredths of one percent by weight and under sixteen one-hundredths of one percent by weight within twenty-five days after the temporary operator's permit is issued;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; and
  - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges.

Richard Costa  
Operator's Signature

10/16/03  
Date



3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing."

Renumber accordingly

Page No. 3

30663.0305

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La Costa Rickford  
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10/16/03  
Date

30663.0306  
Title.

Prepared by the Legislative Council staff for  
Representative Weller  
March 19, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 2, replace "seclions" with "section"

Page 1, line 3, remove "and 39-09-02"

Page 1, line 4, replace "speed limits and" with "the"

Page 9, remove lines 5 through 30

Page 10, remove lines 1 through 26

Renumber accordingly

Page No. 1

30663.0306

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10/6/03  
Date

30663.0307  
Title.

Prepared by the Legislative Council staff for  
Representative Weiler  
March 20, 2003

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1439

Page 1, line 1, remove "create and enact a new paragraph to subdivision b of subsection 3 of"

Page 1, line 2, remove "section 39-06.1-10; to"

Page 1, remove lines 7 through 13

Page 1, line 20, remove "of at least"

Page 1, line 21, remove "eight one-hundredths of one percent by weight and"

Page 1, line 22, remove "The director shall waive the"

Page 1, remove line 23

Page 2, remove lines 1 and 2

Page 2, line 17, remove "of at least"

Page 2, line 18, remove "eight one-hundredths of one percent by weight and"

Page 6, line 4, remove the overstrike over "~~ten~~" and remove "eight"

Page 6, line 20, remove "of an infraction if"

Page 6, remove lines 21 and 22

Page 6, line 23, remove "five-year period," and remove "at least"

Page 6, line 24, remove "eleven one-hundredths of one percent by weight and"

Page 6, line 25, remove the overstrike over "~~or second~~" and remove "or if the"

Page 6, remove lines 26 and 27

Page 6, line 30, remove "at least eight"

Page 6, line 31, remove "one-hundredths of one percent by weight and"

Page 7, line 8, after the period insert "A person convicted of violating subdivision b of subsection 1 is presumed to have an alcohol concentration of at least sixteen one-hundredths of one percent by weight."

Page 7, line 17, remove "If the alcohol concentration was at at least eight"

Page 7, remove line 18

Page 7, line 19, remove "of one percent by weight" and remove "a fine of at least one"

Page 7, line 20, remove "hundred dollars or" and remove "at least eleven"

Page 7, line 21, remove "one-hundredths of one percent by weight and"

Page 7, line 29, remove "at least eight one-hundredths of one"

Page 7, line 30, remove "percent by weight and"

Page 8, line 7, remove "at least eight one-hundredths of one percent by weight and"

Page 11, line 14, remove "of at least eight one-hundredths of"

Page 11, line 15, remove "one percent by weight and"

Page 11, line 16, remove "The director shall waive the suspension if the alcohol concentration"

Page 11, remove lines 17 and 18

Renumber accordingly

Date: 3-20-03  
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1439

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do not pass

Motion Made By Senator Espgaard Seconded By Senator Mutch

Senators	Yes	No	Senators	Yes	No
Senator Thomas Trenbeath, Chair	✓		Senator Dennis Bercier		
Senator Duaine Espgaard, V. Chair	✓		Senator Ryan Taylor	✓	
Senator Duane Mutch	✓				
Senator Dave Nething		✓			

Total (Yes) 4 No 1

Absent 1

Floor Assignment Senator Trenbeath

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE (410)**  
March 21, 2003 12:53 p.m.

Module No: SR-51-5435  
Carrier: Trenbeath  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**  
HB 1439, as engrossed: Transportation Committee (Sen. Trenbeath, Chairman)  
recommends **DO NOT PASS** (4 YEAS, 1 NAY, 1 ABSENT AND NOT VOTING).  
Engrossed HB 1439 was placed on the Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-51-5435

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*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

2003 HOUSE TRANSPORTATION

CONFERENCE COMMITTEE

HB 1439

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Salvatore Riccardi  
Operator's Signature

10/6/03  
Date

# 2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439

House Transportation Committee

☒ Conference Committee

Hearing Date April 4, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.4 to 48.5

Committee Clerk Signature

*Lauren B. Zait*

Minutes:

Chairman, Rep. Weisz opened the conference committee with a call of the roll:

Rep. Weisz

Sen. Trenbeath

Rep. Weiler

Sen. Nething

Rep. Zaiser

Sen. Bercier

All were present and responded to role call.

Chairman Weisz asked the Senate members present to give the background to the Senate amendments and their rationale. Sen. Nething stated that they basically kept the DOT bill -- that portion that provided for the graduated BAC and took everything else out of the bill. Rep. Zaiser, to clarify asked whether they left the BAC back at .10 -- Sen. Nething answered in the affirmative. They took out the 0.08 and removed the speed limit. Discussion followed, that inasmuch the legislature had as of this time adopted the 0.08 BAC and adopted the graduated 0,08 --- then other points of the bill which had been removed --what else but this bill was

*Lauren B. Zait*  
Operator's Signature

*10/6/03*  
Date



Page 2  
House Transportation Committee  
Bill/Resolution Number HB 1439  
Hearing Date April 4, 2003

effective until August 1, 2003 and this is the law until then unless there is an emergency added to some of the other laws then this is still the law but at 0.10. Rep. Weisz explained to the committee that the Attorney General's office and the ND States Attorney's Association and others are expressing concerns for this bill as it is. Their concerns begin with the prosecution of those offenses where the offender refuses the blood test and enters a plea which results in a lesser penalty.

Sen. Nething -- then you didn't have any problem with the graduated -- ?

Rep. Weisz --- no as a matter of fact we like the graduated ---- I know that a lot of people have problem with it but -- the States Attorneys are working on the problems to see if they can fix it -- They say that with the graduated BAC and you pick somebody up -- they refuse and plead down to a lesser offense -- and on the criminal end their argument is you can't convict them without the BAC -- of anything

Sen. Trenbeath -- you could but there are only two ways -- convict of driving under the influence and most of those people are motivated to enter a guilty plea once they sober up and realize they are going to lose the license because they refused the BAC test --

Rep. Weisz -- that is the problem they are going to plead guilty right away to a lesser offense because the BAC is not known.

Rep. Zaiser in my proposed bill there was a higher penalty --

Rep. Weisz -- right but you can convict them criminally.

Sen. Trenbeath -- there is some language in this bill I don't like -- starting on page 6 -- line 17 -- persons convicted of violating subdivision B which is driving under the influence ---

Richard J. Costa  
Operator's Signature

10/16/03  
Date

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House Transportation Committee  
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Hearing Date April 4, 2003

not the presumption -- " is conclusively presumed to have an alcohol concentration of at least 0.16 or -- "

Discussion continued with prosecution and defense --etc -- etc --

Kieth Magnusson, ND DOT; John Olson, ND States Attorney Asociation: and Ladd Erickson, States Attorney from McClean county were available as resource personnel advisory to the committee.

Keith Magnusson -- responded there is no standard language which is used across the country.

Rep. Zaiser said that he had looked at the requirement from states all across the country and they were all over the ball park on these issues.

Enhanced penalties in both fines and suspensions were discussed.

Language for enhance penalties for refusals were discussed for both administratively and criminally.

Various cut-off levels for several criminal penalties in relation to the present law and refusals at these levels compared to deterrents already available in the administrative section were considered.

John Olson had checked with Cynthia Thielen, States Attorney of BurleighCounty as their objections to the bill -- basically it caused too many procedural problems on the criminal side.

The results of the blood tests are not available until after the first appearance -- by that time the offended has pleaded sentenced. The 'professional , seasoned offender ' is wise to this time factor. Asking the court to refrain or wait until the blood tests results are available causes procedural problems.

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House Transportation Committee  
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Hearing Date April 4, 2003

Sen. Trenbeath stated that the administrative actions are now based on the BAC results or from the refusal because of the thirty days for the hearing.

Following discussion of some of the options to be considered for this bill it was decided to look at language which would put the enhanced suspensions on the civil side --- also look at language to modify the refusals --- in other words look at the bill without the enhanced criminal and with the enhanced administrative -- let the State Attorneys look at it.

Ladd Erickson stated that he thought the enhanced penalties for the higher BAC's had merit.

In the .25 -- .30 or high areas of BAC involving deaths and injuries into the special punishment section of the code which bring about Class A misdemeanors and stiffer penalties might be another area to see what could be done. This would mean that the BAC level would not have to be known if the prosecutors believed that -- well it would mean that procedural problems in Chapter 38 would not be a problem -- a history or severity -- whatever you could amend into the higher charge. the mandatory 90 day minimum kicks in but might not be justified.

Sen. Trenbeath questioned whether that would solve the cases first discussed because when the guy first comes in and the BAC is not known and he has already plead.

The court jurisdictions entered into this because lesser offenses start in city courts and complaints are amended and transferred to district courts.

REp. Weisz and the committee agreed to look at how some of these things might be accomplished thus to meet again.

End of record for this session of this conference committee.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439 conf b

House Transportation Committee

☒ Conference Committee

Hearing Date April 10, 2003

Tape Number	Side A	Side B	Meter #
1	x		0 to 25.1
Committee Clerk Signature <i>Lauren Fido</i>			

Minutes:

Chairman, Rep. Weisz opened this session of the conference committee with a call for the roll;

Rep. Weisz	Sen. Trenbeath
Rep. Weiler	Sen. Nething
Rep. Zaiser	Sen. Bercier

responded to the roll call.

Rep. Weisz presented the amendments which were drafted as the result of the previous conference committee meeting. Sen. Trenbeath inquired about whether section one should be shown in the amendments because that was part of the engrossed bill. Response was no, that is history. Sen. Trenbeath stated that on page 2 that it is the consensus of the committee --- the speed limits were already dealt with -- That had been left on because at the time it was unclear as to the status -- that is also history. Rep. Weisz the refusal language is that still -- Sen. Trenbeath stated that with him it was not -- it still has the same problems they had talked about before. He

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Operator's Signature

*10/16/03*  
Date

Page 2

House Transportation Committee

Bill/Resolution Number HB 1439 conf b

Hearing Date April 10, 2003

felt or in his opinion the sanctions for refusal lie in the administrative section rather than the criminal section. The sanctions double in that section -- Rep. Weisz stated that was what the House had had. According to Sen. Trenbeath none of what was being discussed really addressed nor cured the problem of the pleas to a lesser sentence for lack of the BAC information at the time of the initial appearance. There was considerable discussion of possible options and combinations of the administrative and criminal changes to the bill were evaluated. Rep. Zaiser referred back to his original bill seeking a .16 cut off for tougher criminal penalties. He feel the repeat offenders are a serious societal problems. Ranges of 'cut-offs' between .16 and .20 were discussed. The question was where to establish the legal presumption of when an offender is above a certain limit. There was much time spent on reviewing the steps in the processes both at the administrative level and in the court system. Again the time for receiving the BAC and also the time the court would need to have to reschedule from the first appearance. There is always the possibility that the BAC may come back lower than first thought it would. Following much more discussion it was decided to try again with a different set of amendments which would pick a cut-off and refusal language and that would eliminate the presumption language. John Olson and Cynthia Feland were present as resource people to the committee. They were asked to assist the Intern in drafting amendments which captured the committees thoughts and were still acceptable to the States Attorneys. Cynthia Feland had states her perceptions of the work load and the problems the prosecutors would have with some of the options expressed. She is with the States Attorney's office in Burleigh County. End of record ( 25.4 ) for this session of the conference committee.

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439 conf c

House Transportation Committee

☒ Conference Committee

Hearing Date April 11, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.1 to 26.5
Committee Clerk Signature <i>Lauren B. Zink</i>			

Minutes:

Chairman Rep. Weisz opened this session of the conference committee asking for a call of the roll;

Rep. Weisz

Sen. Trenbeath

Rep. Weiler

Sen. Nething

Rep. Zaiser

Sen. Bercier

responded to the roll call.

John Olson was invited to explain the amendments which he and the Intern had worked on. They were handed out. Cynthia Feland was present at John Olson's request inasmuch that she is experienced in the legislative process as she was John Olson intern when he was in the Senate. She is also a practicing , experienced prosecutor in the Burleigh County States Attorney's office.

Page 2

House Transportation Committee

Bill/Resolution Number HB 1439 conf c

Hearing Date April 11, 2003

He states that they worked on the amendments with the Chairman they had tentatively decide where they were going with the refusal language. He felt that they were on the same 'page'. As it stands that no matter at what BAC level you ( the law ) would administratively you could cure. They took out of the wording out on all the various levels. Sen. Nething asked whether if an offender were stopped he could still cure his license and driving record. John Olson responded that your 1 year suspension could on the first offense by complying with the current law which says --- you sign an affidavit that your are going to plead guilty of and -- all that -- you do not request an administrative hearing. At first offense we are basically letting everyone 'go' -- on a refusal -- refusals only. That is the current law. On second and subsequent refusals you would get two years suspension and three years for a third offense refusal. No cures. The committee was referred to 39-20-04 for comparisons with the current law. The committee then decided that they had put the first offense cure back into the bill. Considerable discussion examined various scenarios and how the proposed language might be applied and whether it would achieve the desired effects. Some other topics were discussed including the problems of a 'cut-off' level to establish presumptive language at .16, .18 or .20 and the coordinated aspects between the administrative and the criminal sides of the code. there seemed to be consensus on the draft of amendments as to what was expected it language to be. Cynthia Feland spoke of the problems the prosecutors have with the appearances and the delay in acquiring The BAC level and the pleadings to lesser charges. She and the committee discussed enhance criminal penalties -- fines, suspensions and the procedural aspects of each of the options as they were brought up. She had several suggestions but not necessarily the wording for amendments. The chairman asked John Olson and Cynthia Feland to assist the Chairman and committee Intern with drafting some of the

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John Olson  
Operator's Signature

10/16/03  
Date

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House Transportation Committee

Bill/Resolution Number HB 1439 conf c

Hearing Date April 11, 2003

amendments for enhancing the criminal side of the code and to blend it with the administrative  
schedules. The committee would meet again. End of record for this session ( 26.5 )

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La Costa Richard  
Operator's Signature

10/16/03  
Date



2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1439 conf d

House Transportation Committee

☒ Conference Committee

Hearing Date April 14, 2003

Tape Number	Side A	Side B	Meter #
1	x		0.1 to 28.0
Committee Clerk Signature <i>Louise H. Fink</i>			

Minutes:

Chairman, Rep. Weisz opened this session of the conference committee with a call for the roll;

Rep. Weisz

Sen. Trenbeath

Rep. Weiler

Sen. Nething

Rep. Zaiser

Sen. Bercier

responded to the roll call.

Rep. Weisz asked the Intern to explain the amendments which had been worked on by himself, John Olson, Cynthia Feland and Chairman Weisz. They basically doubled the fines for each of the sections, they doubled when above .18, and on the last page he added the refusal language in the criminal section. Sen. Trenbeath said they understood what was done but asked whether it was what everybody agreed to do. His understanding was that they were going to shift the enhanced penalties all to the civil side not the criminal side. This deals only with the criminal side. Chairman Weisz -- what this does --- it was based on what the States Attorneys -- it leaves

*Richard Costa*  
Operator's Signature

*10/6/03*  
Date

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House Transportation Committee

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the graduated BAC intact on the administrative side, and took it out of the criminal side and used the enhanced penalties for the criminal side. There is no graduated BAC per se only enhanced penalties if convicted. Sen. Trenbeath stated that that was not what they were talking about -- they were talking about there being an enhanced penalty section, which there is that was going to be amended -- this doesn't do that. This does it by sections. Rep. Weisz responded that this was under the recommendation after Cynthia Feland had spoken and that is why I didn't know it the committee was going to like this -- this isn't my amendment. Sen. Trenbeath -- let me read it more closely. Rep. Weisz -- she (Cynthia Feland) recommended it in this section with this wording. I was there for those conversations. Rep. Zaiser stated that the people back home were talking the impoundment of the car. Sen. Trenbeath stated the problem with that is that the offender is penalized but leaves 4 other family members without a vehicle so you penalize other who were not convicted. It was also pointed out that you may impound one vehicle and the offender has three or four other vehicles to drive. It is ok for one person who owns one vehicle. Rep. Weisz was not saying that he agreed with it but what they what done was to eliminated any reference on the criminal side to the graduated BAC; there is an enhanced penalty which stays -- and she said that instead of the enhanced penalty section -- she thought it was better where we have the current fines for the BAC -- so that is why it says for the first offense -- Sen. Trenbeath agreed in that respect. Rep. Weisz you do have the increased penalties, the class A and class B misdemeanors -- or what ever is currently -- it just doubles the fines. Sen. Nothing-- it just doubles the fines. It just takes it out of the sections to amend this -- Rep. Weisz -- the only other thing is if we like this and if we wanted to we could also -- where it mandates jail sentences we could also say -- double the jail sentence. Sen. Trenbeath -- what this does as I look at it -- it

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House Transportation Committee  
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doesn't get us past what the perceived problem was and that is the guy who comes in on a Monday morning after being arrested on a Friday night and wanted to plead guilty will at least have the ability to know whether it is his first or second offense but not necessarily the blood test -- or whether it is .18 or below -- If that is the case -- are you going to err on the side of clearing the docket or are you going to err of waiting for the blood test and waiting for the trial thus having more trials. Let me throw this out --- it strikes me that this thing has gotten to be a study resolution and that is not to take the easy way out. Rep. Zaiser has told us that it has been enacted in a number of states. There must be some common practice or maybe several ways of doing it that have got some teeth -- it we would study it we could put together a decent law that has some teeth to it. It seems that we are shooting in the dark a lot. Rep. Zaiser stated he would not be opposed to that because he feels strongly that we should take the time to do it right and not piece meal. Some may be effective and some may not be. Sen. Trenbeath -- another thing a study will tell us is -- there are certain criteria that the federal government would have the state comply with --- there are 5 or 7 different programs they would have us to comply with -- graduated penalties is one of those -- is it not? -- Keith Magnusson stated that what they had put together to date would probably fit the government requirement as long as they did not go over .20. The other thing is in the new highway bill we think that of those criteria will go away and they will be going to grants where you show performance -- you may not have the categorical things. John Olson said he thought the bill as it is now would accomplished several things -- one, There is an immediate problem with ??? and I think we have a problem with the BAC s which can easily be addressed on the civil side and I think the criminal thing does need to be looked at -- so I would hope you would at least pass the first two and then on the criminal side of it -- a

Jo Costa Richardson  
Operator's Signature

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House Transportation Committee

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study resolution would take care of that issue but there is no reason not to go ahead on the civil side because you have not no problem there with procedure on the BAc that comes back on the administrative side. On page two the amendments on -- we are amending that from the .16 to the .18 --- so ---Rep. Weisz -- I am tending to agree with Mr. Olson -- I do like what we have on the refusals and on the civil end if the committee would wants we could delete all the language on the criminal part -- leave that as is and add some study language -- that the criminal part does need some study for how to implement a graduated BAC, -- and at what level -- if we have that drafted up how would everybody is every body's afternoon schedule? Sen. Nething had a clinic appointment. The committee recessed.

The committee reconvened at 2:15 PM -- all were present except Sen. Nething who had his clinic appointment. The drafted amendments which included the interim study were reviewed and discussed. Sen. Bercier move to approve the amendments. Rep. Zaiser seconded the motion. The motion carried. Rep. Weiler moved a 'Do Pass as amended' for HB 1439. Sen. Bercier seconded the motion. The motion carried 5 Ayes 0 Nays 1 Absent.

Rep. Weiler was designated to carry HB 1439 on the floor.

End of record ( 28.0 )

30663.0309  
Title.0500

Adopted by the Conference Committee  
April 14, 2003

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

That the Senate recede from its amendments as printed on pages 1038-1041 of the House Journal and pages 885-887 of the Senate Journal and that Engrossed House Bill No. 1439 be amended as follows:

Page 1, line 1, remove "create and enact a new paragraph to subdivision b of subsection 3 of"

Page 1, line 2, remove "section 39-06.1-10; to" and replace "sections" with "section 39-20-04"

Page 1, line 3, remove "39-08-01 and 39-09-02"

Page 1, line 4, remove "speed limits and"

Page 1, line 5, replace "a penalty" with "for a legislative council study"

Page 1, remove lines 7 through 13

Page 1, line 21, replace "sixteen" with "eighteen"

Page 1, line 22, remove ". The director shall waive the"

Page 1, remove line 23

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 2, remove line 1

Page 2, line 2, remove "vehicle"

Page 2, line 5, remove the second "last"

Page 2, line 6, replace "sixteen" with "eighteen"

Page 2, line 9, remove "last"

Page 2, line 10, replace "sixteen" with "eighteen"

Page 2, line 13, remove "last"

Page 2, line 14, replace "sixteen" with "eighteen"

Page 2, line 17, remove "last"

Page 2, line 18, replace "sixteen" with "eighteen"

Page 2, line 22, remove the second "last"

Page 2, line 23, replace "sixteen" with "eighteen"

Page 2, replace lines 24 through 30 with:

**"SECTION 2. AMENDMENT.** Section 39-20-04 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If a person refuses to submit to testing under section 39-20-01 or 39-20-14, none may be given, but the law enforcement officer shall immediately take possession of the person's operator's license if it is then available and shall immediately issue to that person a temporary operator's permit, if the person then has valid operating privileges, extending driving privileges for the next twenty-five days or until earlier terminated by a decision of a hearing officer under section 39-20-05. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the director's official notification to the person of the director's intent to revoke driving privileges in this state and of the hearing procedures under this chapter. The director, upon the receipt of that person's operator's license and a certified written report of the law enforcement officer in the form required by the director, forwarded by the officer within five days after issuing the temporary operator's permit, showing that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a motor vehicle while in violation of section 39-08-01 or equivalent ordinance or, for purposes of section 39-20-14, had reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol, that the person was lawfully arrested if applicable, and that the person had refused to submit to the test or tests under section 39-20-01 or 39-20-14, shall revoke that person's license or permit to drive and any nonresident operating privilege for the appropriate period under this section, or if the person is a resident without a license or a permit to

operate a motor vehicle in this state, the director shall deny to the person the issuance of a license or permit for the appropriate period under this section after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as provided in this chapter. In the revocation of the person's operator's license the director shall give credit for time in which the person was without an operator's license after the day of the person's refusal to submit to the test except that the director may not give credit for time in which the person retained driving privileges through a temporary operator's permit issued under this section or section 39-20-03.2. The period of revocation or denial of issuance of a license or permit under this section is:

- a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof of the same~~, and the suspensions, revocations, or denials resulted from at least two separate arrests.
2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
- a. ~~No~~ An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
    - (1) Intends to voluntarily plead guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
    - (2) Agrees that the person's driving privileges must be suspended as provided under section 39-06.1-10;
    - (3) Acknowledges the right to a section 39-20-05 administrative hearing and section 39-20-06 judicial review and voluntarily and knowingly waives these rights; and
    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;

Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

- d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~
- e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
- f. The person has never been convicted under section 39-08-01.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing."

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 3, remove lines 1 through 31

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 4, remove lines 1 through 31

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 5, remove lines 1 through 30

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 6, remove lines 1 through 31

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 7, remove lines 1 through 31

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 8, remove lines 1 through 31

La Costa Richard  
Operator's Signature

10/16/03  
Date



**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 9, remove lines 1 through 30

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 10, remove lines 1 through 26

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 11, line 15, replace "sixteen" with "eighteen"

Page 11, line 16, remove ". The director shall waive the suspension if the alcohol concentration"

Page 11, remove line 17

Page 11, line 18, remove "was not operating a commercial motor vehicle"

Page 11, line 22, replace "sixteen" with "eighteen"

Page 11, line 28, replace "sixteen" with "eighteen"

**Conference Committee Amendments to Engrossed HB 1439 - 04/15/2003**

Page 12, line 1, overstrike the second ", or"

Page 12, overstrike line 2

Page 12, line 3, overstrike "resulted from at least two separate arrests" and remove "with the last violation or"

Page 12, line 4, remove "suspension" and replace "sixteen" with "eighteen"

Page 12, line 11, replace "sixteen" with "eighteen"

Page 12, line 19, replace "sixteen" with "eighteen"

Page 12, after line 20, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE.** The legislative council shall consider studying, during the 2003-04 Interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

REPORT OF CONFERENCE COMMITTEE (420)  
April 16, 2003 1:59 p.m.

Module No: HR-69-7807

Insert LC: 30663.0309

**REPORT OF CONFERENCE COMMITTEE**

**HB 1439, as engrossed:** Your conference committee (Sens. Trenbeath, Nething, Bercler and Reps. Welsz, Weller, Zaiser) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1038-1041, adopt amendments as follows, and place HB 1439 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1038-1041 of the House Journal and pages 885-887 of the Senate Journal and that Engrossed House Bill No. 1439 be amended as follows:

Page 1, line 1, remove "create and enact a new paragraph to subdivision b of subsection 3 of"

Page 1, line 2, remove "section 39-06.1-10; to" and replace "sections" with "section 39-20-04"

Page 1, line 3, remove "39-08-01 and 39-09-02"

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Page 1, remove lines 7 through 13

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  - a. One year if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has not previously been suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - b. ~~Two~~ Three years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has been once previously suspended, revoked, or issuance denied for a violation of this chapter or section 39-08-01 or equivalent ordinance.
  - c. ~~Three~~ Four years if the person's driving record shows that within the five years preceding the most recent violation of this section, the person's operator's license has at least twice previously been

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

suspended, revoked, or issuance denied under this chapter, or for a violation of section 39-08-01 or equivalent ordinance, or any combination ~~thereof~~ of the same, and the suspensions, revocations, or denials resulted from at least two separate arrests.

2. A person's driving privileges are not subject to revocation under ~~this section~~ subdivision a of subsection 1 if all of the following criteria are met:
  - a. ~~No~~ An administrative hearing is not held under section 39-20-05;
  - b. The person mails an affidavit to the director within twenty-five days after the temporary operator's permit is issued. The affidavit must state that the person:
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    - (4) Agrees that the person's driving privileges must be revoked as provided under this section without an administrative hearing or judicial review, if the person does not plead guilty within twenty-five days after the temporary operator's permit is issued, or the court does not accept the guilty plea, or the guilty plea is withdrawn;
  - c. The person pleads guilty to violating section 39-08-01 or equivalent ordinance within twenty-five days after the temporary operator's permit is issued;
  - d. The court accepts the person's guilty plea and a notice of that fact is mailed to the director within twenty-five days after the temporary operator's permit is issued; ~~and~~
  - e. A copy of the final order or judgment of conviction evidencing the acceptance of the person's guilty plea is received by the director prior to the return or reinstatement of the person's driving privileges; and
  - f. The person has never been convicted under section 39-08-01.
3. The court must mail a copy of an order granting a withdrawal of a guilty plea to violating section 39-08-01, or equivalent ordinance, to the director within ten days after it is ordered. Upon receipt of the order, the director shall immediately revoke the person's driving privileges as provided under this section without providing an administrative hearing."

Page 3, remove lines 1 through 31

Page 4, remove lines 1 through 31

Page 5, remove lines 1 through 30

(2) DESK, (2) COMM

Page No. 3

HR-69-7807

Richard Costa  
Operator's Signature

10/16/03  
Date

**REPORT OF CONFERENCE COMMITTEE (420)**  
**April 16, 2003 1:59 p.m.**

**Module No: HR-69-7807**

**Insert LC: 30663.0309**

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Page 8, remove lines 1 through 31

Page 9, remove lines 1 through 30

Page 10, remove lines 1 through 26

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Page 12, overstrike line 2

Page 12, line 3, overstrike "resulted from at least two separate arrests" and remove "with the last violation or"

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Page 12, line 19, replace "sixteen" with "eighteen"

Page 12, after line 20, insert:

**"SECTION 4. LEGISLATIVE COUNCIL STUDY - PERSONS UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR ANY DRUGS OR SUBSTANCES NOT TO OPERATE VEHICLE.** The legislative council shall consider studying, during the 2003-04 interim, the administrative and criminal laws of driving under the influence of intoxicating liquor, the effects of adopting and implementing a graduated penalty for offenders with a high level of blood alcohol content and repeat offenders, as well as other general deterrents to driving under the influence. The legislative council shall report its findings and recommendations, together with any legislation required to implement the recommendations, to the fifty-ninth legislative assembly."

Renumber accordingly

Engrossed HB 1439 was placed on the Seventh order of business on the calendar.

2003 TESTIMONY

HB 1439

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Richard Costa  
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10/6/03  
Date

SUGGESTED AMENDMENTS TO HB 1439 AND HB1452

Bruce B. Haskell, District Court Judge  
South Central Judicial District  
222-6682  
[bhaskell@ndcourts.com](mailto:bhaskell@ndcourts.com)

39-08-01(4) - "A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection. For purposes of this subsection, unless the context otherwise requires, "drug court program" means a district court-supervised treatment program approved by the supreme court which combines judicial supervision with alcohol and drug testing and chemical addiction treatment in a licensed treatment program. The supreme court may adopt rules, including rules of procedure, for drug courts and the drug court program."

39-08-01(4)(e) "The execution or imposition of sentence under this section may not be suspended or deferred under subsection 3 or 4 of section 12.1-32-02 for an offense subject to subdivision a or b. If the offense is subject to subdivision c or d, the district court may suspend a sentence, except for ten days' imprisonment, under subsection 3 or 4 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 shall require the defendant to complete alcohol and substance abuse treatment and rehabilitation under the direction of the drug court program as a condition of probation in accordance with rules adopted by the supreme court. 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.

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Richard Costa  
Operator's Signature

10/16/03  
Date



**Testimony on House Bill 1439**

*Presented to the  
North Dakota State Legislature Transportation Committee  
Friday, February 7, 2003*

Good Morning.

Thank you for this opportunity to address the House Transportation Committee on important legislation that addresses the critical social issue of drunk driving. I'd like to recognize Representative Weiler, author of House bill 1439, and Senator Nething, the bill's co-sponsor, for their leadership in supporting and advancing this legislation, and helping to make North Dakota's roads safer for everyone.

My name is Dianne Markut and I am the Government Affairs Program Manager for Miller Brewing Company. Miller is the second largest brewer of fine beers in the United States and the country's oldest major brewery with headquarters and a brewing operation in Wisconsin, in addition to breweries in five other states. We work with a network of distributor partners including eight wholesaler operations here in North Dakota, as well as our association with hundreds of retail establishments throughout the state. In addition, a significant portion of the six row malting barely used to produce the malt we need to brew our beer comes from North Dakota. In fact, the vast amount of our six-row malt is purchased from Cargill Malt in Spiritwood. In deed, North Dakota is an important state for us.

So I am here today to ask your support to help save lives on North Dakota's highways. I am here to encourage you to give North Dakota's law enforcement personnel the tools they need to effectively focus their efforts on drunk driving. I am here to urge you to let North Dakota's teenagers know that illegal underage drinking and driving will

not be tolerated. I'm here today to make clear Miller's commitment to those legislative initiatives that strive to effectively end the abuse of our product. I am here, in short, to ask you to make House bill 1439 North Dakota law. For decades, Miller Brewing Company and its distributor partners have initiated, supported and been involved in innovative, proactive and effective efforts designed to help fight drunk driving. We believe our industry should not only be part of the *debate* on these issues, but should be part of the *process* to help find reasonable solutions to these problems -- solutions like those House bill 1439 offers.

Three years ago, Miller Brewing Company was part of a collaborative, community-based effort to help prevent alcohol-related traffic fatalities in Wisconsin by supporting and helping to pass tough, comprehensive laws designed to get chronic drunk drivers off our roads. Working along side business partners, advocacy groups, law enforcement, labor, trade and professional organizations, not to mention the state legislature, we were able to champion the passage of new, tougher drunk-driving laws. The comprehensive legislation addressed the real issues surrounding drunk driving - high BAC drivers, repeat offenders and illegal underage drinkers who drive.

Following the legislative success in Wisconsin, we again worked with the legislatures, and a variety of community-based, law enforcement and other organizations in Illinois, Georgia, and this past session, in Florida to pass comprehensive legislation in all three states.

Why *comprehensive* drunk driving legislation?

Did you know that according to Mothers Against Drunk Driving, one of every three drivers arrested or convicted of drunk driving each year is a repeat offender. And,

that the National Highway Traffic Safety Administration - or NHTSA - reports that 74 percent of fatally-injured drunk drivers have a blood alcohol content level of point-one-five (.15) or above?

The Century Council states that it is the hard-core drunk driver who is involved in 58 percent of all alcohol-related fatalities. They drive drunk at high BAC levels, do so repeatedly and are the most resistant to changing their behavior in spite of previous punishment, education, treatment or public disdain.

Closer to home, NHTSA reports that since 1990, total fatalities in drunk-driving crashes in North Dakota are down 20 percent. Still, since 1990, nearly 500 lives were lost as a result of drunk-driving accidents in which at least one driver had a BAC of .10 or higher.

These tragedies were not caused by the thousands of North Dakota adults who consume and enjoy products like ours responsibly. It was, and is, caused by a relatively small number of individuals who abuse our products.

We must, therefore, address directly the essence of the drunk-driving issue -- the hard-core drunk driver.

House bill 1439 provides the tools to do just that. First, it provides for stiffer penalties for repeat offenders. Second, it provides for improved treatment and supervision options, and encourages the use of innovative technology like the ignition interlock. And third, it continues to call for real penalties for illegal underage drinkers who drive.

Working together, as we did in Wisconsin, Illinois, Georgia and Florida, we were able to continue our fight, and to get the message out that drunk driving and illegal

underage drinking will not be tolerated.

I say "our fight" because this isn't just a beer industry issue. It's clear that the issues of drunk driving and illegal underage drinking go far beyond the realm of any one industry.

Miller and dozens of other companies, groups, associations and individuals have been fighting this effort to help stop alcohol abuse for a long time. And we all believe we have a responsibility to help get the chronic alcohol abusers off our streets and highways. Over the past two decades, all of us working together have reduced the number of alcohol-related traffic deaths by 37 percent (*Signs of Progress: National Highway Traffic Safety Administration*).

We've come a long way, but we still have a long way to go. We should all be proud of our successes and of everyone who has been a part of this effort to help curb the abuse of alcohol. But, we must keep focused on those accidents that can and should be prevented. All of us are ready and willing to continue the good fight, but we need your help.

We need the tools to continue our effective and increasingly successful campaign to get drivers who abuse alcohol off our roads and highways. We need the tools to improve our efforts to rehabilitate those who have fallen into a pattern of abuse. We need this bill - House bill 1439 - to demonstrate to the nation that when you combine the efforts of dedicated people and companies with legislation that focuses effectively on the abusers of alcohol you can save lives on and off the highway.

Help us get the message out that the abuse of alcohol is serious and unacceptable and that passage of House bill 1439 is a major step toward effectively focusing efforts

where they are needed most - on the repeat offender.

I know I can speak for all of us when I say we support this bill, not just as business people and public policy advocates, but as citizens, members of families and friends.

Thank you.

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La Costa Rickford  
Operator's Signature

10/16/03  
Date

Company

Miller Brewing

**COMPARISON OF  
NORTH DAKOTA  
DUI LEGISLATION TO  
MODEL  
ROAD SAFE LEGISLATION**

**JULY 26, 2002**

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LaCosta Richard  
Operator's Signature

10/6/03  
Date

## Overview

### Increased Penalties for Repeat Offenders

#### Increased Fines

To conform to Model Road Safe Legislation goals, minimum fines for first and second offenses should be increased to the Model levels of \$300 and \$600, respectively. The minimum fine for third offenses mirrors Model goals. The maximum fine for third offenses should be increased to \$5,000. Maximum fines for first and second offenses mirror Model goals.

#### License Suspension

To conform to Model Road Safe Legislation goals, North Dakota should increase the license suspension periods for first, second, and third offenses to the Model levels of 1 year, 3 years, and 5 years, respectively.

#### Vehicle Forfeiture

North Dakota's vehicle forfeiture provisions substantially conform to Model Road Safe Legislation goals. To more fully conform to Model goals, however, North Dakota should adopt the Model provision that mandates vehicle forfeiture for a DUI offense committed while the violator's license was suspended for a prior DUI offense.

#### Jail Time

To conform to Model Road Safe Legislation goals, North Dakota should make jail time mandatory for all offenses and should adopt the Model minimum jail time periods for first, second and third offenses of 10 days, 90 days and 120 days, respectively. In addition, North Dakota should increase the maximum jail time periods for first and second offenses to the Model level of 1 year. Maximum jail time periods for third offenses mirror Model goals.

#### Community Service

To conform to Model Road Safe Legislation goals, North Dakota should adopt mandatory community service provisions for first, second and third offenses.

#### Home Confinement / Electronic Monitoring

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model home confinement provision that permits home

confinement for repeat offenders once the minimum period of actual incarceration has been served. North Dakota should also permit electronic monitoring as a condition of probation.

\* \* \* \* \*

### **BAC Standards**

#### **0.08 BAC**

Should North Dakota adopt 0.08 BAC for adults, comprehensive DUI components must be included.

#### **Graduated BAC for Repeat Offenders**

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model graduated BAC provisions for repeat offenders, calling for first offense BAC standard for one or no prior convictions, and a graduated BAC for offenders with two or more prior convictions.

#### **Zero Tolerance for Minors**

North Dakota law substantially conforms to Model Road Safe Legislation goals, although zero tolerance for drivers under the legal drinking age may be the preferred language. "Zero" tolerance may allow for a BAC of up to 0.02 if the alcohol was lawfully obtained (e.g. prescription medication) and taken in therapeutically appropriate amounts.

\* \* \* \* \*

### **Ignition Interlock**

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provision, which mandates ignition interlock for second and subsequent offenses.

\* \* \* \* \*

### **Alternative Transportation**

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provision, which provides grants to fund the costs of transporting persons suspected of having prohibited alcohol concentrations from premises licensed to sell alcohol to their homes ("Safe Ride" programs).



\*\*\*\*\*

### Treatment Services

North Dakota's treatment provisions substantially conform to Model Road Safe Legislation goals.

\*\*\*\*\*

### Support for Targeted Enforcement

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provisions to support targeted enforcement of DUI laws:  
(1) using the proceeds from sales of forfeited vehicles to fund alcohol or drug treatment, rehabilitation, and prevention and education programs, and  
(2) assessing an additional fine of \$100 for DUI offenders and using the proceeds to purchase law enforcement equipment.

\*\*\*\*\*

### Underage Drinking Provisions

#### Strict Underage Drinking Penalties

North Dakota's underage drinking penalty provisions substantially conform to Model Road Safe Legislation goals.

#### Graduated Licensing

North Dakota's graduated licensing scheme substantially conforms to Model Road Safe Legislation goals.

#### Vertical Licensing

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model vertical licensing provision that requires differentiation between driver's licenses of persons under 21 years of age and those 21 and older.

## Analysis

### Increased Penalties for Repeat Offenders

#### Increased Fines

##### North Dakota:

1st offense: \$250 min. - \$1,000 max.  
2nd offense (w/in 5 years): \$500 min.- \$1,000 max.  
3rd offense (w/in 5 years): \$1,000 min. - \$2,000 max.

##### Model Road Safe Legislation:

1st offense: \$300 min. - \$1,000 max.  
2nd offense (w/in 5 years): \$600 min. - \$1,000 max.  
3rd or subsequent offense (w/in 5 years): \$1,000 min. - \$5,000 max.

- If third or subsequent offense, and BAC  $\geq 0.17$  but  $\leq 0.199$ , then fines double.
- If third or subsequent offense, and BAC  $\geq 0.20$  but  $\leq 0.249$ , then fines triple.
- If third or subsequent offense, and BAC  $\geq 0.25$ , then fines quadruple.

##### Analysis:

To conform to Model Road Safe Legislation goals, minimum fines for first and second offenses should be increased to the Model levels of \$300 and \$600, respectively. The minimum fine for third offenses mirrors Model goals. The maximum fine for third offenses should be increased to \$5,000. Maximum fines for first and second offenses mirror Model goals.

#### License Suspension

##### North Dakota:

1st offense (w/in 5 years): 91 days  
2nd offense (w/in 5 years): 365 days  
3rd or subsequent offense (w/in 5 years): 2 years

Model Road Safe Legislation:

1st offense: 12 months (reinstatement permitted after 120 days under specific conditions, including treatment and payment of restoration fee)

2nd offense (w/in 5 years): 3 years (reinstatement permitted after 18 months under specific conditions, including treatment and payment of restoration fee)

3rd or subsequent offense (w/in 5 years): 5 years

Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should increase the license suspension periods for first, second, and third offenses to the Model levels of 1 year, 3 years, and 5 years, respectively.

Vehicle Forfeiture

North Dakota:

Permitted penalty for repeat offenders.

Model Road Safe Legislation:

Mandatory penalty for violator driving while intoxicated and license suspended.

Analysis:

North Dakota's vehicle forfeiture provisions substantially conform to Model Road Safe Legislation goals. To more fully conform to Model goals, however, North Dakota should adopt the Model provision that mandates vehicle forfeiture for a DUI offense committed while the violator's license was suspended for a prior DUI offense.

## Jail Time

### North Dakota:

- 1st offense: up to 30 days
- 2nd offense (w/in 5 years): 5 days (permitted penalty) - 30 days max.
- 3rd offense (w/in 5 years): 60 days min. - 1 year max.

### Model Road Safe Legislation:

- 1st offense: 10 days min. - 12 months max. (portion may be probated)  
(minimum 24 hours actual incarceration)
- 2nd offense (w/in 5 years): 90 days min. - 12 months max. (portion shall  
be probated) (minimum 5 days actual incarceration)
- 3rd or subsequent offense (w/in 5 years): 120 days min. - 12 months max.  
(portion shall be probated) (minimum 30 days actual incarceration)

### Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should make jail time mandatory for all offenses and should adopt the Model minimum jail time periods for first, second and third offenses of 10 days, 90 days and 120 days, respectively. In addition, North Dakota should increase the maximum jail time periods for first and second offenses to the Model level of 1 year. Maximum jail time periods for third offenses mirror Model goals.

Salvatore Riccardi  
Operator's Signature

10/16/03  
Date

Community Service

North Dakota:

2nd offense (w/in 5 years): 30 days (permitted penalty)

Model Road Safe Legislation:

1st offense: 40 hours

2nd offense (w/in 5 years): 30 days

3rd or subsequent offense (w/in 5 years): 30 days

Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should adopt mandatory community service provisions for first, second and third offenses.

## Home Confinement / Electronic Monitoring

### North Dakota:

There are no present home confinement or electronic monitoring provisions for DUI offenses.

### Model Road Safe Legislation:

Home confinement is a permitted penalty for repeat offenders once the minimum period of actual incarceration has been served. Electronic monitoring is a permitted condition of probation.

### Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model home confinement provision that permits home confinement for repeat offenders once the minimum period of actual incarceration has been served. North Dakota should also permit electronic monitoring as a condition of probation.

Richard Costa  
Operator's Signature

10/16/03  
Date

**BAC Standards**

**0.08 BAC**

**North Dakota:**

0.10 BAC for adults

**Model Road Safe Legislation:**

0.10 BAC for adults is appropriate if in accord with existing law  
0.08 BAC for adults only with comprehensive DUI components

**Analysis:**

Should North Dakota adopt 0.08 BAC for adults, comprehensive DUI components must be included.

\* \* \* \* \*

**Graduated BAC for Repeat Offenders**

**North Dakota:**

There are no present provisions regarding graduated BAC for repeat offenders.

**Model Road Safe Legislation:**

- If one or no prior convictions, then prohibited alcohol concentration is commensurate with first offense BAC standard.
- If two or more prior convictions, then graduated BAC.

**Analysis:**

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model graduated BAC provisions for repeat offenders, calling for first offense BAC standard for one or no prior convictions, and a graduated BAC for offenders with two or more prior convictions.



Zero Tolerance for Minors

North Dakota:

0.02 BAC for minors

Model Road Safe Legislation:

Zero tolerance for underage drivers. Zero tolerance may allow for a BAC of up to 0.02 if the alcohol was lawfully obtained and taken in therapeutically appropriate amounts.

Analysis:

North Dakota law substantially conforms to Model Road Safe Legislation goals, although zero tolerance for drivers under the legal drinking age may be the preferred language. "Zero" tolerance may allow for a BAC of up to 0.02 if the alcohol was lawfully obtained (e.g. prescription medication) and taken in therapeutically appropriate amounts.

**Ignition Interlock**

**North Dakota:**

Permitted penalty for repeat offenders.

**Model Road Safe Legislation:**

The Model Road Safe Legislation calls for mandatory installation of ignition interlock devices for repeat offenders.

**Analysis:**

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provision, which mandates ignition interlock for second and subsequent offenses.

### Alternative Transportation

#### North Dakota:

There are no present provisions regarding funding of alternative transportation programs.

#### Model Road Safe Legislation:

The Model Road Safe Legislation calls for additional fines to be allocated as grants for Safe Ride home programs. For example, the Model endorses the issuance of grants by state governments to counties or municipalities or to nonprofit corporations to cover the costs of transporting persons suspected of having a prohibited alcohol concentration from any premises licensed to sell alcohol beverages to their places of residence.

#### Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provision, which provides grants to fund the costs of transporting persons suspected of having prohibited alcohol concentrations from premises licensed to sell alcohol to their homes ("Safe Ride" programs).

### Treatment Services

#### North Dakota:

All offenders are required to undergo an addiction evaluation by an appropriate licensed addiction treatment program. Repeat offenders may further be required to complete alcohol and substance abuse treatment and rehabilitation.

#### Model Road Safe Legislation:

The Model Road Safe Legislation calls for treatment services for all offenders and enhanced treatment services for repeat offenders. For example, the Model endorses assessments for first-time offenders and clinical evaluations for repeat offenders. In addition, the Model endorses mandatory DUI Alcohol or Drug Use Risk Reduction Programs and the development of individualized driver safety plans for all offenders.

#### Analysis:

North Dakota's treatment provisions substantially conform to Model Road Safe Legislation goals.

Al Costa Richardson  
Operator's Signature

10/16/03  
Date

### Support for Targeted Enforcement

#### North Dakota:

There are no present provisions regarding support for targeted enforcement of DUI laws.

#### Model Road Safe Legislation:

The Model Road Safe Legislation calls for law enforcement support in the form of increased funding and training required to uphold new laws and policies. For example, the Model endorses distributing the proceeds from the sale of forfeited vehicles to fund alcohol or drug treatment, rehabilitation, and prevention and education programs, after making the necessary expenditures for any costs incurred in the seizure and the costs of the court and its officers. In addition, the Model endorses assessing additional fines to DUI violators to fund the purchase of law enforcement equipment that will assist in the prevention of alcohol related criminal violence.

#### Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model provisions to support targeted enforcement of DUI laws:

- (1) using the proceeds from sales of forfeited vehicles to fund alcohol or drug treatment, rehabilitation, and prevention and education programs, and
- (2) assessing an additional fine of \$100 for DUI offenders and using the proceeds to purchase law enforcement equipment.

Underage Drinking Provisions

Strict Underage Drinking Penalties

North Dakota:

Current provisions provide for penalties that are specific to offenders under the age of 21, including the cancellation of a permit or license when the violator committed an alcohol-related offense while operating a motor vehicle.

Model Road Safe Legislation:

The Model Road Safe Legislation calls for strict underage drinking penalties. For example, the Model endorses the mandatory revocation of the driving privileges of a person under the age of 21 who is convicted of driving while he or she has any alcohol in his or her body, unless the alcohol in the underage driver's body was lawfully obtained and taken in therapeutically appropriate amounts. See zero tolerance definition.

Analysis:

North Dakota's underage drinking penalty provisions substantially conform to Model Road Safe Legislation goals.

## Graduated Licensing

### North Dakota:

Current provisions provide for a graduated licensing scheme for drivers under 18 years of age.

### Model Road Safe Legislation:

The Model Road Safe Legislation calls for graduated licensing for new drivers. The purpose of the graduated licensing program is to develop safe and mature driving habits in young, inexperienced drivers and reduce or prevent motor vehicle accidents, fatalities, and injuries by:

- (A) providing for an increase in the time of practice period before granting permission to obtain a driver's license;
- (B) strengthening driver licensing and testing standards for persons under the age of 21 years;
- (C) sanctioning driving privileges of drivers under age 21 who have committed serious traffic violations or other specified offenses; and
- (D) setting stricter standards to promote the public's health and safety.

### Analysis:

North Dakota's graduated licensing scheme substantially conforms to Model Road Safe Legislation goals.

## Vertical Licensing

### North Dakota:

There are no present provisions for vertical licensing.

### Model Road Safe Legislation:

The Model Road Safe Legislation calls for a distinct license format for underage drivers. For example, the Model endorses a requirement that each graduated driver's license and each regular driver's license issued to individuals under 21 years of age shall be of a distinct nature from those driver's licenses issued to individuals 21 years of age and older.

### Analysis:

To conform to Model Road Safe Legislation goals, North Dakota should adopt the Model vertical licensing provision that requires differentiation between driver's licenses of persons under 21 years of age and those 21 and older.

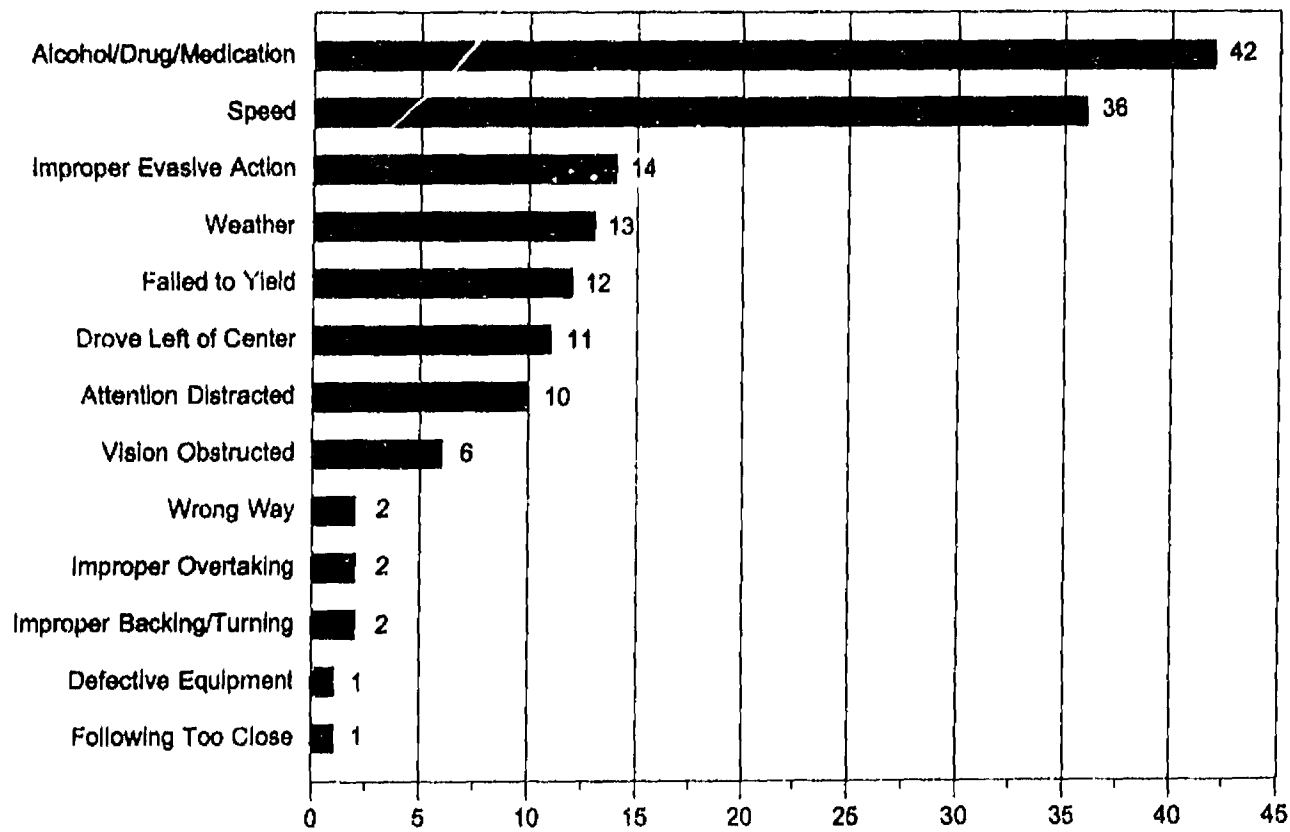


2001 Data

## NORTH DAKOTA/OUT-OF-STATE DRIVER INVOLVEMENT

License	All Crashes	Fatal Crashes	Injury Crashes
North Dakota	19,613 or 88.7%	113 or 84.3%	4,547 or 86.8%
Out-of-State	2,508 or 11.3%	21 or 15.7%	693 or 13.2%
	22,121	134	5,240

## CONTRIBUTING FACTORS IN 2001 FATAL CRASHES\*



\* There were 96 fatal crashes in 2001. Multiple contributing factors may be associated with one fatal crash and are based on the officer's preliminary investigation.

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*Richard Costa*  
Operator's Signature

*10/16/03*  
Date

2001 Data

## AVERAGE ECONOMIC COSTS OF NORTH DAKOTA TRAFFIC CRASHES

Year	Fatalities		Injuries		Property Damage Crashes		Total Est. Loss
	Number	Est. Loss	Number	Est. Loss	Number	Est. Loss	
1992	88	\$ 77,440,000	5,122	\$151,099,000	8,196	\$53,274,000	\$281,813,000
1993	89	80,100,000	5,507	180,629,600	9,176	53,220,800	313,950,400
1994	88	80,960,000	5,659	193,537,800	10,189	67,247,400	341,745,200
1995	74	68,080,000	5,743	196,410,600	10,303	67,999,800	332,490,400
1996	85	68,850,000	6,015	205,713,000	11,762	71,748,200	346,311,200
1997	105	82,950,000	5,900	189,980,000	12,589	75,534,000	348,464,000
1998	92	90,160,000	4,917	167,669,700	10,950	70,080,000	327,909,700
1999	119	116,620,000	4,962	176,647,200	11,027	70,572,800	363,840,000
2000	86	86,000,000	4,619	163,050,700	11,294	73,411,000	322,461,700
2001	105	105,000,000	4,608	162,662,400	11,534	74,971,000	342,633,400

Year	Per Fatality	Per Injury	Per Property Damage
1992 <sup>1</sup>	\$ 880,000	\$29,500	\$6,500
1993 <sup>1</sup>	900,000	32,800	5,800
1994 <sup>1</sup>	920,000	34,200	6,600
1995 <sup>1</sup>	920,000	34,200	6,600
1996 <sup>1</sup>	810,000	34,200	6,100
1997 <sup>1</sup>	790,000	32,200	6,000
1998 <sup>1</sup>	980,000	34,100	6,400
1999 <sup>1</sup>	980,000	35,600	6,400
2000 <sup>1</sup>	1,000,000	35,300	6,500
2001 <sup>2</sup>	1,000,000	35,300	6,500

<sup>1</sup>Estimated figures published by National Safety Council.  
<sup>2</sup>2001 estimated figures not available at time of publication

Economic costs estimate the economic impact of motor vehicle crashes based on five cost components: (a) wage and productivity losses, which include wages, fringe benefits, household production, and travel delay; (b) medical expenses including emergency service costs; (c) administrative expenses, which include the administrative cost of private and public insurance plus police and legal costs; (d) motor vehicle damage, including the value of damage to property; and (e) employer costs for injuries to workers.

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*Jo Costa Rickford*  
 Operator's Signature

*10/6/03*  
 Date

## Proposed Rules

Federal Register

Vol. 68, No. 25

Thursday, February 6, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

### DEPARTMENT OF TRANSPORTATION

#### National Highway Traffic Safety Administration

#### Federal Highway Administration

#### 23 CFR Part 1225

[Docket No. NHTSA-2002-13680]

RIN 2127-A144

#### Operation of Motor Vehicles by Intoxicated Persons

**AGENCY:** National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

**SUMMARY:** This document proposes to implement a new program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This document solicits comments on a proposed regulation to clarify what States must do to avoid the withholding of funds.

**DATES:** Comments must be received on or before April 7, 2003.

**ADDRESSES:** Submit written comments to the Docket Management Facility, DOT, 400 Seventh Street, SW., Room PL-401, Washington, DC 20590.

Alternatively, you may submit your comments electronically by logging onto Docket Management System (DMS) site at <http://dms.dot.gov/submit>. Click on "Help & Information" or "Help/Info" to view instructions for

filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this proposed rule.

**FOR FURTHER INFORMATION CONTACT:** In NHTSA: Ms. Marlene Markison, Office of Injury Control Operations & Resources, NHT-200, telephone (202) 366-2121, fax (202) 366-7394; Ms. Heidi Coleman, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820; or Ms. Tyler Bolden, Office of Chief Counsel, NCC-113, telephone (202) 366-1834, fax (202) 366-3820.

In FHWA: Mr. Randy Umbs, Office of Safety, HSA-1, telephone (202) 366-2177, fax (202) 366-3222; or Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC-30, telephone (202) 366-0791, fax (202) 366-7499.

**SUPPLEMENTARY INFORMATION:** The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides that, beginning in FY 2004, the Secretary of Transportation shall withhold certain Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law as described in 23 U.S.C. 163(a) (Section 163). Section 163 provides that 0.08 BAC laws must specify that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

#### Background

##### The Problem of Impaired Driving

In the year 2000, the number of people who were killed in motor vehicle crashes reached 41,821. Alcohol use was linked to 16,653 of these crashes, an average of 7 alcohol-related fatalities every 32 minutes. Although only about 8 percent of all motor vehicle crashes involve the use of alcohol, 40 percent of fatal crashes involve alcohol use.

Injuries caused by motor vehicle crashes are the leading cause of death for people aged 4 to 33. Each year, these injuries cost Americans an estimated \$150 billion, including \$19 billion in medical and emergency expenses, \$42 billion in lost productivity, \$52 billion in property damage, and \$37 billion in

other crash related costs. Alcohol-related crashes account for roughly 30 percent of these costs—more than \$45 billion each year.

While alcohol-related fatalities have dropped significantly, from 22,084 in 1990 to 16,653 in 2000, a 25 percent decrease in ten years, alcohol involvement is still the single greatest factor in motor vehicle deaths and injuries. The 25 percent decrease in alcohol-related fatalities can be attributed to more effective laws, strong enforcement and highly visible public information and education. Four laws that have been proven effective in the fight against impaired driving are: illegal *per se* laws; administrative license revocation (ALR) laws; "zero tolerance" laws and 0.08 BAC laws. Both individually and collectively, these laws have played a crucial role in reducing the number of alcohol-related fatalities in this country. Indeed, it has been estimated that, if every State adopted a 0.08 BAC law, approximately 590 lives could be saved each year.

#### Support for 0.08 BAC Laws

As we stated in the final rule for the Section 163 Incentive Grant program (64 FR 35568, July 1, 1999), a number of studies sponsored by NHTSA support a legal limit of 0.08 BAC, copies of which have been placed in the docket. For example, the effect of California's 0.08 law was analyzed in a 1991 NHTSA study entitled "The Effects Following the Implementation of an 0.08 BAC Limit and an Administrative Per Se law in California." The study found that 81 percent of the driving population knew that the BAC limit had become stricter (as the result of a successful public education effort). The State experienced a 12 percent reduction in alcohol-related fatalities, although some of the reduction may have resulted from a new ALR law that was enacted during the same year that the BAC standard was lowered. The State also experienced an increase in the number of impaired driving arrests.

Another study, "Lowering State Legal Blood Alcohol Limits to 0.08%: The Effect on Fatal Motor Vehicle Crashes," reported in the September 1996 issue of the "American Journal of Public Health," analyzed the effect of lowering BAC levels to 0.08 in multiple states. The study, conducted by Boston University's School of Public Health,

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*Richard*  
Operator's Signature

10/16/03  
Date

compared the first five States to lower their BAC limit to 0.08 (California, Maine, Oregon, Utah and Vermont) with five nearby States that retained the 0.10 BAC limit. The results of this study suggested that 0.08 BAC laws, particularly in combination with ALR laws, reduced the proportion of fatal crashes involving drivers and fatally injured drivers at blood alcohol levels of 0.08 percent and higher by 16 percent and those at a BAC of 0.15 percent and greater by 18 percent.

The immediate significance of these findings is that, the 0.08 BAC laws, particularly in combination with ALR laws, not only reduced the overall incidence of alcohol fatalities, but they also reduced fatalities at the higher BAC levels. The effect on the number of extremely impaired drivers was even greater than the overall effect. The study concluded that if all States lowered their BAC limits to 0.08, alcohol-related fatalities would decrease nationwide by 500-600 per year, which would result in an economic cost savings of approximately \$1.5 billion.

More recently, additional studies have been conducted to determine the effectiveness of 0.08 BAC laws. For example, in August 1999, NHTSA sponsored a study conducted by the Pacific Institute for Research and Evaluation, entitled "The Relationship of Alcohol Safety Laws to Drinking Drivers in Fatal Crashes," which analyzed the relationships between the passage of key alcohol safety laws and the number of drinking drivers in fatal crashes. Specifically, the study evaluated the extent to which the reduction in alcohol-related fatalities could be attributed to ALR laws, 0.10 BAC laws and/or 0.08 BAC laws. Study results indicated that all three laws were associated with significant reductions in fatal crashes involving drinking drivers. In particular, 0.08 BAC laws were associated with 8 percent reductions in the involvement of both high BAC and lower BAC drivers in fatal crashes. The study concluded that if all 50 States had 0.08 BAC laws in 1997, 590 lives could have been saved.

Also, Illinois' 0.08 BAC law, which was enacted in July 1997, was analyzed in a NHTSA-sponsored study conducted by the Pacific Institute for Research and Evaluation in December 2000. This study, entitled "The Effectiveness of the Illinois .08 Law," found that after enactment of the 0.08 BAC law, the number of DUI arrests of offenders in the new 0.08 to 0.09 range increased wide, while the average BAC of arrested drivers declined. In addition, the proportion of offenders with BACs higher than 0.15 decreased, and the

proportion of offenders in the 0.10 to 0.14 range increased slightly. Moreover, the State experienced an overall reduction of 13.7 percent in the proportion of alcohol-related fatalities, whereas surrounding States without a 0.08 BAC law showed no similar decline. Illinois also experienced an increase, by almost 11 percent, in the number of total impaired driving arrests, and it was estimated that the 0.08 law may have saved 47 lives in 1998 alone. However, only 18 months of data were available for the report, so the above-mentioned reductions are limited somewhat by the relatively short period of post-0.08 law data available and the possible effects of other legislation implemented at the same time as the 0.08 law.

An update to the Illinois study was published in December 2001. The update, entitled "Evaluation of the Illinois .08 Law: An Update with the 1999 FARS Data," concluded that Illinois' 0.08 law reduced the percentage of drinking drivers involved in fatal crashes by 13.65%. In addition, it was estimated that during a two-year period (1998 and 1999), the 0.08 law had saved approximately 105 lives.

Another recent study sponsored by NHTSA, entitled "Relative Risk of Fatal Crash Involvement by BAC, Age, and Gender," provides further support for a 0.08 BAC limit. The study reported that the relative risk of involvement in a fatal passenger vehicle crash increased with higher driver BAC levels in every age and sex group, among both fatally injured and surviving drivers. Even a BAC increase of 0.02 percentage points among 16-20 year old male drivers was estimated to more than double the relative risk of a fatal single-vehicle crash injury. In addition, at the midpoint of the 0.08 to 0.10 BAC range, the relative risk of a fatal single vehicle crash injury varied between 11.4 percent for drivers 35 and older to 51.9 percent for male drivers aged 16-20. The study concluded that drivers at non-zero BACs somewhat lower than 0.10 percent pose substantially elevated risks to themselves and to other road users.

In addition, the results of a study, entitled "A Review of the Literature on the Effects of Low Doses of Alcohol on Driving-Related Skills," were published by NHTSA in 2000. The study indicated that alcohol impairs some driving skills, beginning with any significant departure from zero BAC. Moreover, significant impairment was reported at 0.05 BAC, and by 0.08 BAC, more than 94 percent of the reviewed studies showed impairment in measurable skills. The study concluded that all

drivers can be expected to experience impairment in some driving-related skills by 0.08 BAC or less.

Also in 2000, NHTSA published a study conducted by the Southern California Research Institute, entitled "Driver Characteristics and Impairment at Various BACs." The study reported that there is evidence of significant alcohol-related impairment throughout the range from 0.02 to 0.10 BAC. In addition, the study found that the percentage of people exhibiting impairment and the magnitude of that impairment grows as BAC levels increase. The study concluded that a majority of the driving population is impaired in some important measures at BACs as low as 0.02 BAC.

#### TEA-21, Section 163 Incentive Grant Program

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA-21) was signed into law. Section 1404 of the Act established a \$500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt tough 0.08 BAC laws. Section 163 provides that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. See 63 FR 46881. On July 1, 1999, the agencies published a final rule, implementing the Section 163 incentive grant program. See 64 FR 35568.

#### Effects of Section 163 Incentive Grant Program

Before the Section 163 program was implemented, only 16 States had enacted laws that established 0.08 BAC as their legal *per se* limit. Fifteen of these States had laws already in effect, so they were eligible to receive Section 163 incentive grant funds in FY 1998. One State, Washington, enacted a 0.08 BAC law on March 30, 1998, but the law did not become effective until January 1, 1999. Thus, Washington was not eligible to receive Section 163 incentive grant funds until FY 1999. Between June 1998 and October 2000, only two additional States (Washington and Texas) and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all of the Section 163 criteria. Although both

Kentucky and the Commonwealth of Puerto Rico enacted 0.08 BAC laws in 2000, these laws did not become effective until October 1, 2000 and January 10, 2001 respectively. Thus, Kentucky and Puerto Rico were not eligible for Section 163 incentive grant funds until FY 2001. Rhode Island also adopted a 0.08 BAC law in 2000, but its 0.08 BAC law does not conform to all of the requirements of Section 163 and Rhode Island is not eligible to receive an incentive grant. See Table 1.

**DOT Appropriations Act for FY 2001—Sanction Program**

In an effort to further reduce drunk driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. See Public Law 106-346—Appendix, sec. 351, 114 Stat. 1356A-34, 35. Section 351 of Public Law 106-346—Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA-21 and will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, fifteen additional States (Alaska, Arizona, Arkansas, Connecticut, Georgia, Indiana, Louisiana, Maryland, Mississippi, Missouri, Nebraska, Oklahoma, South Dakota, Tennessee and Wyoming) have enacted conforming 0.08 BAC laws. By October 2002, thirty-three States, the District of Columbia and the Commonwealth of Puerto Rico had established 0.08 BAC laws that met all of the requirements of Section 163. See Table 1.

Although, Louisiana enacted a 0.08 BAC law in June 2001, this 0.08 BAC law will not become effective until September 30, 2003. Thus, Louisiana will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004. Similarly, Tennessee enacted a 0.08 BAC law in June 2002, however, this law will not become effective until July 1, 2003. Thus, Tennessee will not be eligible to receive an incentive grant under the Section 163 program until FY 2003, but it will avoid the withholding of funds in FY 2004.

**TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA (AS OF OCTOBER 2002)**

State	Enactment Date	Effective Date
Alabama	07/31/95	10/01/95
Alaska	07/03/01	09/01/01
Arizona	04/11/01	08/31/01
Arkansas	03/08/01	08/13/01
California	1989	01/01/90
Connecticut	07/01/02	07/01/02
District of Columbia	12/01/98	04/13/99
Florida	04/27/93	01/01/94
Georgia	04/16/01	07/01/01
Hawaii	06/30/95	06/30/95
Idaho	03/17/97	07/01/97
Illinois	07/02/97	07/02/97
Indiana	05/09/01	07/01/01
Kansas	04/22/93	07/01/93
Kentucky	04/21/00	10/01/00
Louisiana	06/26/01	09/30/03
Maine	04/28/88	08/04/88
Maryland	04/10/01	09/30/01
Mississippi	03/11/02	07/01/02
Missouri	06/12/01	09/29/01
Nebraska	03/01/01	09/01/01
New Hampshire	04/15/93	01/01/94
New Mexico	03/19/93	01/01/94
North Carolina	07/05/93	10/01/93
Oklahoma	06/08/01	07/01/01
Oregon	08/04/83	10/15/83
Puerto Rico	01/10/00	01/10/01
South Dakota	02/27/02	07/01/02
Tennessee	06/27/02	07/01/03
Texas	05/28/99	09/01/99
Utah	03/19/83	08/01/83
Vermont	06/08/91	07/01/91
Virginia	04/06/94	07/01/94
Washington	03/30/98	01/01/99
Wyoming	03/11/02	07/01/02
Total: 33 States, plus the District of Columbia and Puerto Rico		

**Adoption of 0.08 BAC Law**

Section 351 provides that the Secretary must withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements. To avoid such withholding, a State must enact and enforce a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

Any State that does not enact and enforce a conforming 0.08 BAC law will be subject to the withholding of a portion of its Federal-aid highway funds. In accordance with the statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1, 2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld on that date. These sections

relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

**Compliance Criteria**

To avoid the withholding from apportionment of Federal-aid highway funds, a State must enact and enforce a 0.08 BAC law that meets the criteria defined in the implementing regulations for the Section 163 incentive grant program. See 64 FR 35568. To conform to the requirements of Section 163, a law must contain the following elements:

**1. Any Person**

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to all persons. The law can provide for no exceptions.

**2. Blood Alcohol Concentration (BAC) of 0.08 Percent**

A State must set a level of no more than 0.08 percent as the legal limit for blood alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

**3. Per Se Law**

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a *per se* offense of driving while intoxicated. In other words, States must establish a 0.08 "*per se*" law, that makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

**4. Primary Enforcement**

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not qualify for funds under this program.

**5. Both Criminal and ALR Laws**

A State must establish a 0.08 BAC *per se* level under its criminal code. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must

establish an illegal 0.08 BAC *per se* level for its ALR law, as well.

#### C. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense. That is the State's non-BAC *per se* driving while intoxicated offense in the State.

In States with multiple drinking and driving provisions, the final rule for the Section 163 incentive grant program stated that the agencies will consider a number of factors to determine whether the State's 0.08 BAC *per se* law has been deemed to be or is equivalent to the standard driving while intoxicated offense in the State. These factors include the treatment of these offenses, their relation to other offenses in the State and the sanctions and other consequences that result when persons violate these offenses. See 64 FR 35568.

A more detailed discussion of the six elements described above is contained in the interim final rule establishing the criteria for the Section 163 incentive grant program. See 63 FR at 46883-84.

During the agency's administration of the Section 163 incentive grant program, we have considered a number of

proposed laws to determine whether a State's proposed 0.08 BAC offense was equivalent to the State's standard driving while intoxicated offense. In some reviews, these proposed laws were determined to be equivalent and in others they were determined not to be equivalent. Two examples are described below.

#### A. Rhode Island

Following our review of Rhode Island's new 0.08 BAC law (enacted in 2000), we concluded that the law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or equivalent to that offense in the State. Moreover, we determined that the Rhode Island law did not apply the 0.08 BAC legal limit to the State's criminal code.

Previously, Rhode Island's law provided that a person convicted of driving while intoxicated (with a BAC of 0.10 or more) had committed a misdemeanor and was subject to a fine of \$100-\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year. Such person was subject also to a driver's license suspension of three to six months.

Rhode Island's new law creates a tiered penalty scheme that distinguishes between offenders with BACs of: (1) 0.08-0.09; (2) 0.10-0.14

and (3) 0.15 and above. Under the new law, a person convicted of driving while intoxicated with a BAC of 0.08 or 0.09 may receive the following sanctions: a fine of \$100-\$250; 10-60 hours of public community restitution; a special driving course; and suspension of their driver's license up to 45 days. Moreover, the new law treats a first time violation to the 0.08 offense only as a civil violation.

However, under Rhode Island's new law, a person convicted of driving while intoxicated with a BAC of 0.10-0.14 is subject to a fine of \$100-\$300, 10 to 60 hours of public community restitution and/or imprisonment for up to one year, and suspension of their driver's license for 3 to 6 months. Likewise, persons convicted of driving while intoxicated with a BAC level of 0.15 or more, would receive increased penalties of a fine of \$500, 20-60 hours of public community restitution, imprisonment up to one year, and suspension of their driver's license for 3-6 months. Thus, the agency concluded that Rhode Island's new law subjected 0.08 offenders to less severe sanctions than those imposed on 0.10 offenders; and contained sanctions that were permissive, and not mandatory, as required by Section 163 and the agency's implementing regulations. In addition, violations to the 0.08 offense were only civil offenses and violations to the 0.10 offense were criminal. Accordingly, the agency determined that Rhode Island's law did not make driving while intoxicated with a BAC of 0.08 the standard driving while intoxicated offense or an equivalent offense.

#### B. Alaska

Following our review of Alaska's new law (enacted in 2001), the agency concluded that the 0.08 law was equivalent to the standard driving while intoxicated offense in the State.

Previously, Alaska's law provided that a person committed the crime of driving while intoxicated if the person operated or drove a motor vehicle while they were under the influence of intoxicating liquor or if a chemical test revealed a BAC of 0.10 or more (within four hours after the alleged offense). This offense was a Class A misdemeanor and was subject to at least 72 hours of imprisonment and a fine of not less than \$250.

Under Alaska's new law, people commit the crime of driving while intoxicated if they operate or drive a motor vehicle while they are under the influence of intoxicating liquor or if a chemical test reveals a BAC of 0.08 or more (within four hours after the alleged offense). This offense is a Class A

misdemeanor and is subject to not less than 72 hours of imprisonment and a fine of not less than \$250.

In summary, Alaska's new 0.08 law retained the same penalties as those previously imposed on the State's 0.10 law. Indeed, the new law merely changed the State's legal limit from 0.10 to 0.08 BAC. Accordingly, the agency concluded that Alaska's new 0.08 BAC offense was equivalent to the standard driving while intoxicated offense in the State.

#### Demonstrating Compliance

##### A. Sanction Program

Section 351 provides that funds will be withheld from apportionment from noncomplying States beginning in FY 2004. To avoid the withholding, each State would be required by this proposed regulation to submit a certification. Under the agencies' proposal, States would be required to submit their certifications on or before September 30, 2003, to avoid the withholding from apportionment of FY 2004 funds on October 1, 2003. The agencies propose to permit (and strongly encourage) States to submit certifications in advance.

States that are found in noncompliance with these requirements in any fiscal year would be required to submit a certification to avoid the withholding of funds from apportionment in the following fiscal year. To avoid the withholding in that fiscal year, these States would be required to submit a certification demonstrating compliance before the last day (September 30) of the previous fiscal year.

Certifications submitted under this part would provide agencies with the basis for finding States in compliance with the Section 351 requirements. The agencies are proposing that the certification must consist of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. § 163 and 23 CFR Part 1225; and (2) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

Once a State is determined by the agencies to be in compliance with the requirements of Section 163, the agencies propose that the State would not be required to submit certifications in subsequent fiscal years, unless the State's law had changed. This proposal specifies that it would be the



responsibility of the States to inform the agencies of any such change in a subsequent fiscal year, by submitting an amendment or supplement to its certification.

#### B. Incentive Grant Program

In this notice, the agencies propose to simplify the certification process for the incentive grant program. States that are receiving their first grant under the incentive grant program, must submit a certification consisting of: (1) A statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR Part 1225; (2) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs; and (3) citations to the State's conforming 0.08 BAC *per se* law, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of that law, as well.

To receive subsequent-year grants under this program, a State must submit a certification consisting of: (1) A statement from an appropriate State official, stating either that the State either has amended or has not changed its 0.08 BAC *per se* law; (2) a statement that the State is enforcing the law; and (3) a statement that the funds received by the State under this program will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs. Citations to the States' laws will not be required for subsequent-year certifications.

For all States in compliance with the requirements of Section 163 in FY 2003, certifications submitted for the incentive grant program will apply toward avoiding the withholding of apportionment funds in FY 2004. No further certification is necessary from these States. To qualify for an incentive grant in any fiscal year, the regulations would continue to provide that the certifications must be received by July 15.

#### Certification Requirements

As stated previously, under the agencies' proposal, States would be required to submit a conforming certification on or before July 15, to receive an incentive grant in a fiscal year; and on or before September 30, to avoid the withholding of funds in a fiscal year.

#### Advance Notice of Apportionments Under the Sanction Program

To avoid a sanction beginning in FY 2004, the agencies propose that States would be required to enact and make effective a conforming 0.08 BAC law and submit a conforming certification on or before the last day (September 30) of the previous fiscal year.

However, NHTSA and the FHWA expect that States will want to know well in advance of the September 30 deadline whether their laws meet the requirements of Section 163 and its implementing regulations. Accordingly, the agencies encourage States to submit their laws for review as quickly as they can. More importantly, the agencies encourage States that are considering proposed 0.08 BAC legislation to request reviews from the agencies while the legislation is still pending. The agencies will review the legislation and determine whether it would conform to the Federal requirements if enacted without change, thus avoiding a situation whereby a State unintentionally enacts a non-conforming 0.08 BAC law and then is unable to meet the Section 163 requirements. Requests should be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

To ensure that the States are advised of their status under the Section 163 program well in advance of any withholding, the agencies propose to notify States of their compliance or non-compliance with the requirements of Section 163 through FHWA's normal certification of apportionments process. Under this process, States are advised in advance of the amount of funds expected to be withheld from their apportionments in the upcoming fiscal year. The advance notice normally is issued not later than ninety days prior to the date on which the funds are to be apportioned. (Since funds normally are apportioned on October 1 of each year, the advance notice ordinarily is issued on or about July 1 of each year.)

Under the agencies' proposal, if the agencies have not received a law and certification from a State and determined that they conform with the requirements of Section 163 and its implementing regulations before June 15, the agencies would make an initial determination that the State is in non-compliance with Section 163, and the State would be advised in FHWA's advance notice of apportionments of the amount of funds expected to be withheld from the State in the following fiscal year.

Accordingly, if States wish to avoid receiving an advance notice of apportionments, based on an initial determination that the State is in non-compliance with Section 163, the State should submit a conforming law and certification to the agencies well in advance of June 30.

Each State that receives an advance notice of non-compliance with the requirements of Section 163 will have an opportunity to rebut the agencies' initial determination. In addition, these States will be notified of the agencies' final determination of compliance or non-compliance as part of the final notice of apportionments (which normally is issued on October 1 of each year).

#### Period of Availability for Funds

Section 351 provides an incremental approach to the withholding of funds from apportionment for noncompliance. If a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter. See Table 2.

In addition, if a State comes into compliance with the requirements of Section 163 on or before September 30, 2007, the funds withheld from apportionment would be restored to the State. Specifically, Section 351 provides that, "If within four years from the date that the apportionment for any State is reduced in accordance with this section the Secretary determines that such State has enacted and is enforcing a provision described in section 163(a) of chapter 1 of title 23, United States Code, the apportionment of such State shall be increased by an amount equal to such reduction."

However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State will begin to lapse and will no longer be available for apportionment. Section 351 provides that, "If at the end of such four-year period, any State has not enacted and is not enforcing a provision described in section 163(a) of title 23, United States Code, any amounts so withheld shall lapse."

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004 .....	2	
2005 .....	4	
2006 .....	6	
2007 .....	8	
2008 .....	8	2% withheld in FY04.
2009 .....	8	4% withheld in FY05.
2010 .....	8	6% withheld in FY06.
2011 .....	8	8% withheld in FY07.
2012 .....	8	8% withheld in FY08.

**Comments**

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. See 49 CFR 553.21. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Unit, Docket No. NHTSA-01-XXXX, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS website at <http://dms.dot.gov> and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Unit located at Room PL-401 on the 2a level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday

through Friday. You may also review submitted comments on the Internet by taking the following steps:

- (1) Go to the DMS web page at <http://dms.dot.gov/search/>.
- (2) On that page, click on "search".
- (3) On the next page (<http://dms.dot.gov/search/>) type in the four digit docket number shown at the beginning of this notice. Click on "search".
- (4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

**Regulatory Analyses and Notices****Executive Order 12988 (Civil Justice Reform)**

This proposed rule would not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures**

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order.

The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The agency has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures and determined that it is "significant" because it involves the withholding of Federal-aid highway funds to any State that has not enacted and is not enforcing a 0.08 BAC law by FY 2004, a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this proposed rule could total from \$100 million to \$400 million. See NHTSA, Preliminary Regulatory Evaluation, 0.08 Sanction Program 20. Thus, this rulemaking could be economically significant under Executive Order 12866, i.e., have an annual effect on the economy of \$100 million or more. Accordingly, a preliminary regulatory evaluation has been prepared to review costs and benefits imposed on States to enact a 0.08 BAC law. The preliminary regulatory evaluation has been placed in the docket for this proposed rule.

The preamble to this rulemaking indicates that the adoption of 0.08 BAC laws could save 590 lives each year. This "benefit" is based upon a research study published in 1999 that measured the effects of 0.08 BAC laws by reviewing the fatality numbers in States with conforming 0.08 BAC laws at the time this study was conducted (15 States). This study concluded that 0.08 BAC laws might reduce alcohol-related fatalities by approximately 8 percent.

The preliminary regulatory evaluation uses a slightly different measure to determine the "benefit" of adoption of 0.08 BAC laws. As explained in more detail below, the "benefit" was determined in the preliminary regulatory evaluation by measuring the fatality numbers for the States that had not enacted conforming 0.08 BAC laws before the creation of the 0.08 sanction program in October 2000 (32 States), using an estimate that 0.08 BAC laws might reduce alcohol-related fatalities by 7 percent. This estimate was derived from a recent Center for Disease Control (CDC)-sponsored independent task force study, which calculated 7 percent as the median effectiveness percentage for 0.08 BAC laws. Using these measures, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws. See Preliminary Regulatory Evaluation, *supra*, at 1.

**A. Benefits**

The preliminary regulatory evaluation concludes that changing the level of



alcohol from 0.10 to 0.08 in State *per se* laws will result in fewer alcohol-related traffic crashes and fatalities.

Specifically, the preliminary regulatory evaluation cites a review performed by a CDC-sponsored independent task force, to support the conclusion that 0.08 BAC laws may reduce alcohol-related fatalities by 7 percent each year. This 7 percent reduction could annually prevent 616 fatalities, over 13,800 non-fatal injuries, and over 50,000 damaged vehicles involved in over 30,000 property-damage only (PDO) crashes. See Preliminary Regulatory Evaluation, *supra*, at 23.

#### B. Costs

The regulatory evaluation concludes that the impact of 0.08 BAC laws will depend on drinking drivers' perceptions that they are more likely to be caught over the limit, and thereby reduce the amount they drink before driving. To successfully accomplish this goal, States will develop public information campaigns, both at the time of legislative debate to inform the public of the need for the law and later during enforcement and prosecution of the law to help achieve compliance. Typically, States will use unpaid media exposure, such as news stories and public service messages, however, some States will implement public information campaigns that involve paying for airtime on radio and television and/or advertising space in print media and billboards. Both approaches would require the time of State and local workers, especially in the State Highway Safety Office, to develop and manage these public information programs.

To mitigate costs incurred in educating the public, States may use Federal highway safety grant funds to pay for the development of public information programs and for airtime and print advertising space. In addition, NHTSA provides sample press release kits to aid communities in publicizing new programs through newspapers, TV and radio.

Aside from advertising costs, the preliminary regulatory evaluation expects that the costs for implementing this proposed rule will be minimal and consist of changes that States make as a matter of course when amending a State law (e.g., updating driver handbooks and forms).

#### C. Conclusion

The preliminary regulatory evaluation states that it is difficult to measure the costs of 0.08 BAC laws. This difficulty arises because impaired-driving laws are often passed concurrently or within the

same year. In addition, the degree of the law's enforcement, and especially the publicity surrounding that enforcement, can vary significantly and such variability can influence the law's effectiveness. Nonetheless, the preliminary regulatory evaluation concludes that 616 lives (are being/ could be) saved each year by the adoption of 0.08 BAC laws.

#### Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. We hereby certify that the rule proposed in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have passed 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range. See Preliminary Regulatory Evaluation, *supra*, at 21.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as \$28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 17 States affected, only 16 percent of all State highway expenditures. Accordingly, even if the sanction was imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States

would be within a range of only 0.77 percent (in Massachusetts) to 3.62 percent (in Montana). Further, most of these businesses do not rely totally on highway construction contracts for their revenue. Based on these considerations, the preliminary regulatory evaluation finds that this action would not result in a significant impact on the small businesses involved. See Preliminary Regulatory Evaluation, *supra*, at 21.

#### Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR Part 1320.

#### National Environmental Policy Act

The agencies have analyzed this proposed action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it would not have any significant impact on the quality of the human environment.

#### The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the \$100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

#### Executive Order 13132 (Federalism)

Executive Order 13132 requires the agencies to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, the agency may not issue a regulation with

Federalism implications, that imposes substantial direct compliance costs, and it is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agencies also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

We have analyzed this proposed rule in accordance with the principles and criteria set forth in Executive Order 13132 and have determined that this proposal may have Federal implications. We intend to consult with State and local officials about this proposal, and we will include a Federalism summary impact statement in the preamble to the final rule. NHTSA seeks comments on the federalism impact of this proposal.

**Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)**

The agencies have analyzed this proposed rule under Executive Order 13175, and believe that the proposed action would not have a substantial direct effect on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

**Regulation Identification Number**

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

**List of Subjects in 23 CFR Part 1225**

Alcohol and alcoholic beverages, Transportation, Highway safety.

In consideration of the foregoing, the agencies propose to revise 23 CFR part 1225 as follows:

**PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS**

- 1225.1 Scope.  
1225.2 Purpose.

- 1225.3 Definitions  
1225.4 Adoption of 0.08 BAC *per se* law.  
1225.5 General requirements for incentive grant program.  
1225.6 Award procedures for incentive grant program.  
1225.7 Certification requirements for sanction program.  
1225.8 Funds withheld from apportionment.  
1225.9 Period of availability of withheld funds.  
1225.10 Apportionment of withheld funds after compliance.  
1225.11 Notification of compliance.  
1225.12 Procedures affecting states in noncompliance.  
Appendix A To Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

**Authority:** 23 U.S.C. 163; sec. 351, Pub. L. 106-346—Appendix, 114 Stat. 1366A-34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

**§ 1225.1 Scope.**

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and section 351 of Public Law 106-346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

**§ 1225.2 Purpose.**

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106-346—Appendix.

**§ 1225.3 Definitions.**

As used in this part:

- (a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.  
(b) *ALR* means either administrative license revocation or administrative license suspension.  
(c) *BAC* means either blood or breath alcohol concentration.  
(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.  
(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the fifty States, the District of Columbia, or Puerto Rico.

**§ 1225.4 Adoption of 0.08 BAC *per se* law.**

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

- (a) Apply to all persons;  
(b) Set a BAC of not higher than 0.08 percent as the legal limit;  
(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;  
(d) Provide for primary enforcement;  
(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and  
(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

**§ 1225.5 General requirements for incentive grant program.**

(a) *Certification requirements.*

(1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible

for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of \_\_\_\_\_ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the

certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) *Limitation on grants.* A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

#### § 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds are subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA-21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator and FHWA Division Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects.

#### § 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the

previous fiscal year, that it meets all of the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225. The certifying statement should be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of \_\_\_\_\_, do hereby certify that the (State or Commonwealth) of \_\_\_\_\_ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225, (citations to State law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under paragraphs (a) and (b) of this section if the State's 0.08 BAC *per se* law changes.

#### (e) FY 2003 Certifications.

(1) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program. No further certification is necessary from these States.

(2) Any State that submits a certification of compliance in conformance with the requirements of 23 U.S.C. 163 between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004. No further certification is necessary from these States.

#### § 1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold two percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United

States Code, if a State has not enacted a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold four percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold six percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold eight percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

#### § 1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within four years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part.

#### § 1225.10 Apportionment of withheld funds after compliance.

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

#### § 1225.11 Notification of compliance.

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

#### § 1225.12 Procedures affecting states in noncompliance.

(a) Each fiscal year, beginning with FY 2004, based on a preliminary review of certifications received, States that are determined to be in noncompliance with 23 U.S.C. 163 and this part, will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

#### Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

#### EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse (percent)
2004 .....	2	
2005 .....	4	
2006 .....	6	
2007 .....	8	
2008 .....	8	2% withheld in FY04.
2009 .....	8	4% withheld in FY05.
2010 .....	8	6% withheld in FY06.
2011 .....	8	8% withheld in FY07.
2012 .....	8	8% withheld in FY08.

Issued on: January 31, 2003.

Mary E. Peters,  
Administrator, Federal Highway  
Administration.

Jeffrey W. Runge,  
Administrator, National Highway Traffic  
Safety Administration.

[FR Doc. 03-2790 Filed 2-5-03; 8:45 am]

BILLING CODE 4910-59-P

#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 117

[CGD05-02-065]

RIN 2115-AE47

##### Drawbridge Operation Regulations; Raccoon Creek, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. The proposed rule would increase openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. This change will provide for the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398-6222. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting

**HOUSE TRANSPORTATION COMMITTEE**  
**Representative Robin Weisz, Chairman**  
**February 7, 2003**

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**Corey Schlenger, Drug Court Supervisor**  
**Parole Officer III**  
**Department of Corrections and Rehabilitation**  
**Field Services Division**  
**Presenting Testimony Re: HB1439**

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On behalf of the Division of Field Services of the Department of Corrections and Rehabilitation and representing the interests of the North Dakota Drug Court in Bismarck I am testifying in opposition of HB 1439.

I wish have this committee recognize the passing of HB 1191, which removes the sunset clause in NDCC 39-08-01 and preserves the language regarding the North Dakota Drug Court intended in HB 1191.

The Division of Field Services of the Department of Corrections and Rehabilitation recognizes a substantial impact by the passing of HB 1439 regarding the increased penalties. Class B misdemeanors would be moved into the Jurisdiction of the District Courts and are authorized by law to be ordered to probation under the Department of Corrections and Rehabilitation. Additionally, Class A misdemeanors would be moved to a Class C felony and must be ordered by law to the Department of Corrections and Rehabilitation.

The passing of HB 1439 would create a significant fiscal impact on the State of North Dakota and the Department of Corrections and Rehabilitation. The Division of Field Services would anticipate requiring at least 2 additional Probation Officers as a result of HB 1439.

Yolanda Richardson  
Operator's Signature

10/16/03  
Date

TESTIMONY OF JANET DEMARAIS SEAWORTH  
EXECUTIVE DIRECTOR  
NORTH DAKOTA BEER WHOLESALERS ASSOCIATION

HB 1439  
House Transportation Committee

Mr. Chairman, members of the committee, my name is Janet Seaworth. I'm the Executive Director of the North Dakota Beer Wholesalers Association.

We appear today in opposition to HB 1439 as it is currently drafted. We do have concerns regarding the increased penalties for low BAC first time offenders. We have appeared before this committee previously in opposition to .08. Our position has not changed. The drunk driving problem does not lie with the low BAC driver. The problem lies with the high BAC, repeat offender. We support efforts that focus on that driver. But HB 1439 as it is written, does not do that.

In fact, the bill imposes significantly more punitive sanctions for driving at .08 than are now provided for violation at .10. That is going to do nothing to engender public support and respect for the law.

In 2000, the National Traffic Safety Board recommended that states focus on the high BAC repeat offender. To that end, the board recommended, among other things, vehicle sanctions such as impoundment, forfeiture and ignition interlocks be employed *for high BAC* first offenders and *repeat offenders*. Yet HB 1439 would allow ignition interlock for first time offenders regardless of the BAC level and would impose a 365 day suspension for a first offense.

To the extent HB 1439 imposes significantly tougher sanctions on low BAC first time offenders, the bill does not comport with NTSB recommendations that states focus on the high BAC repeat offender. To the extent the bill can be amended to better focus on the real problem, we would reconsider our opposition to the bill as it is currently written.

Thank you.

*For more information, contact the North Dakota Beer Wholesalers Association, P.O. Box 7401, Bismarck, ND 58507; (701)258-8098.*

*Richard Costa*  
Operator's Signature

*10/16/03*  
Date



*Rep. Weiler*

H/B 1439

Points	1st Offense BAC	Crime	Evaluation	Administrative License Suspension	Minimum Fine
2	.08 - .109	Infraction	Yes	None	\$100
-	.11 - .159	Class B Misdemeanor	Yes	91 days	\$250
-	.16 +	Class A Misdemeanor	Yes	180 days	\$500
2nd Offense					
	BAC				
-	.08 - .159	Class B Misdemeanor	Yes	1 year	\$500
-	.16 +	Class A Misdemeanor	Yes	2 years	\$1,000
3rd and Subsequent Offenses					
	BAC				
-	.08 - .159	Class A Misdemeanor	Yes	2 years	\$1,000
-	.16 +	Class C Felony	Yes	3 years	\$2,000
4th Offense					
	BAC				
-	.08 +	-	-	-	\$2,000

**Current Law**

BAC	Offense	Crime	Evaluation	Administrative License Suspension	Minimum Fine
0.10 +	1st	Class B Misdemeanor	Yes	91 days	\$250
0.10 +	2nd within 5 years	Class B Misdemeanor	Yes	1 year	\$500
0.10 +	3rd within 5 years	Class A Misdemeanor	Yes	2 years	\$1,000
0.10 +	4th within 7 years	Class A Misdemeanor	-	-	\$1,000
0.10 +	5th within 7 years	Class C Felony	-	-	\$1,000

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*To Costa Richard*  
Operator's Signature

*10/6/03*  
Date

Date: 03/12/2003 03:06 pm -0500 (Wednesday)  
From: Tyler Bolden  
To: Marti Miller  
Subject: Re: Fwd: ND legislation - Complete

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**\*\* High Priority \*\***

Marti -

Here is a preliminary draft of our review for ND. Part of my first e-mail was cut off. The official review will follow later this week.

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I have reviewed both bills from the State of North Dakota. HB 1439 is not compliant with all the requirements of Section 163. Most notably, HB 1439 retains the 0.10 limit in the ALR provisions and distinguishes the penalties for offenders with a BAC of .08-.10, .11-.15 and .16 and higher. Specifically, the fines associated with the proposed .08 offense are reduced and the driver's license suspension provisions may be waived for offenders with a BAC between .08-.10.

I have also reviewed HB 1161. This bill is compliant with the Section 163 requirements. It retains the same penalties previously associated with the .10 offense, but lowers the legal limit to .08.

Accordingly, this office concludes that HB 1439, if enacted without change, would not allow North Dakota to meet the requirements of Section 163. However, HB 1161, if enacted without change, would enable North Dakota to comply with the requirements of Section 163 and the agency's implementing regulations.

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Tyler Bolden  
Operator's Signature

10/6/03  
Date



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**TESTIMONY OF DEB JEVNE  
SPOKESPERSON FOR MADD CASS COUNTY  
SENATE TRANSPORTATION COMMITTEE  
FRIDAY, MARCH 14, 2003**

**FOR THE RECORD, MY NAME IS DEB JEVNE, AND I AM THE  
SPOKESPERSON FOR MOTHERS AGAINST DRUNK DRIVING CASS  
COUNTY AND ALSO A MEMBER OF THE RED RIVER VALLEY SAFE  
COMMUNITIES COALITION, BUT MORE IMPORTANTLY I AM HERE  
BECAUSE I AM A VICTIM OF DRUNK DRIVING.**

**I AM HERE TODAY TO TESTIFY IN OPPOSITION OF HOUSE BILL 1439  
AS WE DO NOT FEEL THAT THIS MEETS THE SIX REQUIREMENTS SET  
FORTH BY THE FEDERAL GOVERNMENT FOR .08 PASSAGE. THE  
REQUIREMENTS ARE AS FOLLOWS:**

- **IT MUST APPLY TO ALL DRIVERS**
- **IT MUST SET A BAC LEVEL OF NO MORE THAN .08**
- **IT MUST ESTABLISH DRIVING AT .08 BAC AS AN ILLEGAL PER SE  
OFFENSE**
- **IT MUST PROVIDE FOR PRIMARY ENFORCEMENT OF THE LAW**
- **IT MUST APPLY TO THE CRIMINAL CODE AND, IN STATES WITH  
ADMINISTRATIVE  
LICENSE REVOCATION (ALR) LAWS, TO THE ALR LAW AS WELL**
- **IT MUST BE DEEMED TO BE EQUIVALENT TO THE STATE'S  
STANDARD  
"DRIVING WHILE INTOXICATED" OFFENSE.**

Richard Costa  
Operator's Signature

10/16/03  
Date

WE DO FEEL THAT THE PORTION OF THE BILL REGARDING THE  
HIGHER BAC. OFFENDERS IS VERY GOOD HOWEVER WE CAN NOT  
SUPPORT THE BILL THE WAY IT IS CURRENTLY WRITTEN.  
THANK YOU FOR YOU TIME.

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La Costa Richard  
Operator's Signature

10/6/03  
Date



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Yolanda Rickford  
Operator's Signature

10/16/03  
Date