

2019 HOUSE TRANSPORTATION COMMITTEE

HB 1154

2019 HOUSE STANDING COMMITTEE MINUTES

Transportation Committee
Fort Totten Room, State Capitol

HB 1154
1/17/2019
#30969

- Subcommittee
 Conference Committee

Committee Clerk: Jeanette Cook

Explanation or reason for introduction of bill/resolution:

A BILL relating to a bicycle and a ridden animal being deemed a vehicle.

Minutes:

Chairman Ruby opened the hearing on HB 1154.

Rep. Shannon Roers Jones, District 46, introduced HB 1154. This should be a very straight-forward bill. We are changing the language so it says, “non-criminal traffic offenses” as specified in these chapters. It states that a bicycle or ridden animal must be deemed a vehicle. We are taking out “criminal traffic offenses” in those chapters. It would include a DUI, harassing a domesticated animal, and leaving the scene of an accident. Currently, law enforcement has the ability to cite someone for DUI when they are on a bicycle or a horse. The problem with that is that it is the same level of offense as driving a motor vehicle. It affects you record in the same way. We are asking that it be removed and changed, so that a bicycle and a ridden animal would be deemed a vehicle only for non-criminal offenses.

Vice Chairman Rick C. Becker: Do you think the language in the bill is strong enough to take care of the problem?

Rep. Roers Jones: Based on research that we have done, I think it will resolve the issue because Driving Under the Influence requires a vehicle.

Representative Nelson: So, now I can drink and ride my horse, but if I text, I can get a fine?

Rep. Roers Jones: I am not sure about texting and riding your horse.

Vice Chairman Rick C. Becker: If I am riding a horse, do I need to stop at a stop sign and use my arm to signal a turn?

Rep. Roers Jones: I would imagine that if you are riding on the road, you should do those things.

Jackson Lafgren, lawyer in Bismarck speaking for himself: I am in support of HB 1154. Our law isn't clear where it comes to the ability to get a DUI on a bicycle. We do have a default statute that states that motor vehicles don't include anything powered by humans. But the problem is that this statute, which is hidden later in the Code, goes against that. It says a bike and a horse do count. This could lead to some serious results. I would urge a DO PASS on HB 1154.

There was no further support for HB 1154.
There was no opposition for HB 1154.

Carol Two Eagles, spoke in a neural capacity on HB 1154. She stated that horses are prey animals. If they need to be ridden with the traffic, they will get scared if a vehicle comes up behind them. She cannot find a law that says they should be ridden with traffic, but has been told that. They should ride facing the traffic for safety purposes. I hope there is something that can be done in the law somewhere, if not in this bill.

Chairman Ruby: I'm not sure that this is the right bill, but thank you for the information.

The hearing on HB 1154 was closed.

Vice Chairman Rick C. Becker moved a DO PASS on HB 1154.
Representative Grueneich seconded the motion.

A roll call voice was taken: Aye 12 Nay 1 Absent 1
The motion carried.

Representative Kading will carry HB 1154.

Date: 1-17-19
 Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. H131154

House Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Becker Seconded By Gruneich

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN RUBY	X		REP LAURIEBETH HAGER	X	
VICE CHAIR BECKER	X		REP KARLA ROSE HANSON	X	
REP JIM GRUENEICH	X		REP MARVIN NELSON	X	
REP TERRY JONES	X				
REP TOM KADING	X				
REP EMILY O'BRIEN	X				
REP MARK OWENS		X			
REP BOB PAULSON	X				
REP GARY PAUR	X				
REP ROBIN WEISZ	A				
REP GREG WESTLIND	X				

Total (Yes) 12 No 1

Absent 1

Floor Assignment Kading

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

REPORT OF STANDING COMMITTEE

HB 1154: Transportation Committee (Rep. D. Ruby, Chairman) recommends **DO PASS**
(12 YEAS, 1 NAYS, 1 ABSENT AND NOT VOTING). HB 1154 was placed on the
Eleventh order on the calendar.

2019 SENATE TRANSPORTATION

HB 1154

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1154
3/1/2019
33041

- Subcommittee
 Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a bicycle and a ridden animal being deemed a vehicle.

Minutes:

No Attachments

Representative Shannon Roers Jones, District 46, Fargo: If you are riding a bike or an animal under the influence it will not be applied to DUI or Actual Physical Control (APC).

Chairman Rust: You said it can't be applied to DUIs and I thought you said a second thing.

Representative Roers Jones: Actual Physical control (APC). Which is often times charged if someone were in their vehicle but they were not driving, or even if they had their vehicle running but they were in the back seat. They were drunk they crawled in the back seat they wanted to sleep it off and then they were going to drive home when they were more sober, they could be charged with actual physical control (APC) which has the same consequences as a DUI. Not that I have ever seen anyone do it, but if you were walking a horse or walking a bicycle you could be charged if you were doing it under the influence of drugs or alcohol you could be charged with the same criminal charge as driving a vehicle under the influence.

Senator Dwyer: Is DUI a non-criminal traffic offense?

Representative Roers Jones: No, so what we are doing is limiting the definition only to non-criminal offenses. So what that would do is take out the criminal charges such as driving under the influence or actual physical control. It's saying for the criminal charges, you can't consider a bicycle a vehicle, you can't consider a horse a vehicle

Senator Dwyer: You can or you cannot?

Representative Roers-Jones: It's confusing because it's kind of in the negative, but it's saying for non-criminal offenses a bicycle or ridden animal must be deemed a vehicle. So when you take that and read that kind of in the negative you're saying, for criminal charges it's not a vehicle.

Chairman Rust: It changes it to a non-criminal traffic offense or it changes from?

Representative Roers Jones: The way that it's written right now it doesn't differentiate between criminal offenses and non-criminal offenses, it just says a bicycle or a ridden animal must be considered a vehicle. So what we've changed in the language we just say, "for non-criminal offenses these things must be considered a vehicle." So it's saying if you are riding a bicycle down the highway and you're not respecting the right of way or stopping at stop lights you could be charged with something because a bicycle or horse are a vehicle. What we're saying is we want to make sure that that only applies to non-criminal offenses and consequently by limiting it to non-criminal offenses it means it would not be applied to driving under the influence or actual physical control.

Senator Patten: Wagon trains, where would they fit into this?

Representative Roers Jones: Since that is not a ridden animal, it would be a horse say pulling a cart or a carriage of some sort that would not be limited by this definition.

Senator Clemens: Can you give me a couple of examples of non-criminal offenses?

Representative Roers Jones: Non-criminal offenses would be other offenses that you could encounter with your car for example. If you were driving on the wrong side of the road, a bicycle and horse has to follow the same traffic laws as a motor vehicle does. So you could be given a traffic citation, speeding, almost any traffic offense. Its saying for any non-criminal traffic offense on a bicycle on a horse, that is a vehicle. So that it falls under the definition, it has to follow the same rules as a car. We're just saying if we're talking about a dui, driving under the influence riding a horse is not the same as driving under the influence with a car. There's not the same potential for causing damage. If you do cause an accident, if you do cause damage there's other remedies. For the purposes of following traffic laws this is a vehicle, for the purposes of charging someone with a criminal consequence that carries thousands of dollars of fines and possible jail time this is not a vehicle.

Chairman Rust: Examples of a criminal offense would only be a DUI or actual physical control?

Representative Roers-Jones: Exactly, yes.

Senator Dwyer: Chapters 39-08 through 39-13 were part of the law before and I'm just looking at them, there's many sections.

Representative Roers-Jones: It's most of the chapters related to motor vehicles.

Senator Dwyer: The reason for asking the question is, a guy might want to go through all those sections and see if there's anything else. Or maybe you have?

Representative Roers-Jones: I have not done every single chapter myself personally, but I have worked with attorneys who are familiar with all of the chapters personally.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1154
3/7/2019
33409

- Subcommittee
 Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a bicycle and a ridden animal being deemed a vehicle.

Minutes:

2 Attachments

Chairman Rust: Brief description of bill

Senator Dwyer: This bill seems ridiculous to me. A person on a bicycle, if they go on the road; sure if you're riding your horse in your backyard or your field, but if you get inebriated then you go on the road and you cause an accident seems like you should be subject to the same penalties as anybody else.

Senator Bakke: Isn't that what this is saying, that if you're on your horse or your bicycle that you are considered a vehicle?

Senator Dwyer: No, it's just the opposite.

Chairman Rust: What I wrote down is, "it changes to noncriminal traffic offense" an example was if you're driving on the wrong side of the road that's a noncriminal offense. She said that a traffic violation like failure to yield or speeding and noncriminal offenses. She said examples of criminal offenses are DUI or APC (Actual Physical Control). Evidentially right now if you're riding a bicycle and you were drunk and you got charged, you would be going through all of the same things that a person driving a vehicle would be under with regard to DUI law, the fines, the penalties and everything else. That's according to the person who testified and introduced the bill.

Senator Patten: I think one of the other components was even if you had been drinking and you were walking down the sidewalk pushing your bicycle, you're still in Actual Physical Control, which would be a criminal offense under this. If you were at an event where you were holding the reins of a horse, you're in Actual Physical Control of the horse. Now they also said they didn't think anybody would get charged in a case like that. But the component of holding a horse for somebody else if you've been drinking could put you at risk of being charged under this law. That's probably a stretch, but it's possible.

Senator Bakke: I've you're on a bicycle or on a horse and you're intoxicated and you're causing accidents, then you should be charged for causing the accidents. Right?

Chairman Rust: And I would assume you would be charged for something, but it wouldn't be a DUI, you would be a noncriminal offense traffic offense, not a criminal one. You can still be charged and you more than likely will be charged, but it won't be a criminal violation. Which is a pretty hefty violation. It can't be applied to DUIs or APC, which I think carry some pretty heavy things with them.

Senator Clemens: From the first time I saw this I've had trouble trying to understand this, but I'm getting closer. However, from what you just said sometimes the horse and the bicycle are a vehicle. Then other times, when you get to the more serious stuff, they're not a vehicle, correct? It's saying the only time that a bike and a horse can be a vehicle are when it's noncriminal. So what they're saying is; if you're on your horse or bike you can't get a DUI, you can't get a More Care Required. That's what it's saying. If somebody runs through a stop sign, I don't care if they're on a bike or a horse and they're drunk, why shouldn't they be prosecuted for a DUI? I mean a horse could go right through a car. So if I'm understanding this right, I don't think I can support this.

Senator Bakke: I'm thinking back, my husband had a co-worker who had gotten multiple DUIs and had their license taken away. So his mode of transportation to get back and forth when he no longer had a license was on a bicycle. But, if he rode on that bicycle drunk, he should be in the same sort of trouble as he was as if he was in a motor vehicle. Because he was riding on the road. So maybe we need to amend this to say that when you're riding on public streets. Now if someone's intoxicated and they're riding their bike in the middle of a field, that's one thing, but if you're on the road and you're going to be interacting with motor vehicles and you could cause harm then I don't know why it matters if you're on a donkey, a camel a horse or in a car. You're causing harm.

Chairman Rust: I'm thinking that the chances of doing a lot of damage on a bicycle or horse are significantly different than if you're driving a car or a motorcycle. Because those have the potential of high rates of speed. We're probably not looking at anything that's going to be real fast here. I don't see the same severity, but maybe I'm to lenient today. I still believe that they still should be charged, and that's true, they can be charged with a noncriminal offense but being charged with a criminal on seems a little heavy.

Senator Patten: I think to put that back in perspective again; if you run a stop light in your bicycle and you get into an accident and you've been drinking, the way this reads now you would not be able to be charged with a DUI, you would be able to be charged with probably running through a stop sign and you would also carry the liability of any damages that took place to whether it's a car or a person or whatever it is, because you had a driving violation, not a criminal violation. So there's an association of whatever the violation that took place as a result of your actions is still something that can be cited, it's just whether it falls under the criminal code. Do you agree Senator Dwyer?

Senator Dwyer: Certainly. So as I said at the hearing 39-08 through 39-13 there's probably 150 sections. If we pass this, if you're on a bike or a horse you can't be charged with a criminal traffic offense, even if you're causing accidents.

Senator Fors: Are DUI and APC the only two criminal offenses?

Chairman Rust: I don't know; those were the two that were given to us. Senator Dwyer do you have them all?

Senator Dwyer: No, I was also going to look through all of those and see what violations might be criminals, but I didn't get a chance to do that.

Senator Patten:

Senator Bakke: So you're on your bicycle and you're intoxicated and you cause an accident because one driver swerves to avoid you and hits a pedestrian and kills the pedestrian, you're not going to get anything more than a failure to yield or a speeding ticket on the bike when you were the one who caused the accident. Then who's going to be responsible for the death of this pedestrian?

Senator Patten: Senator Dwyer, negligent homicide? In a case if you're drunk acting stupid, your horse gets away at the fairgrounds, runs over somebody and kills them, I guess that would be a more likely event regarding horses or something like that.

Senator Dwyer: Negligent Homicide is definitely not included in 39-08 through 39-13. But yeah, you could be charged with a crime for doing such a thing.

Senator Bakke: But with this bill you wouldn't be charged because of this. Right?

Senator Dwyer: You could be charged with a manslaughter or a (inaudible). No, it doesn't fall under this. I don't know, the only two offenses are actually APC and DUI in all these sections, I don't know.

Senator Patten: Shared a personal story.

Chairman Rust: I think for a number of those people who have DUIs a bicycle becomes their mode of transportation and maybe in some cases in rural country it might be a horse. I think for a lot of people in towns it's probably a bicycle.

Senator Fors: So if this gets passed, then the bicycle becomes the vehicle and if it doesn't get passed it's a nothing bill?

Chairman Rust: My guess is if we don't pass it then the bicycle or the ridden animal revert back to what we have now, where they are still considered a vehicle even for criminal offenses. All this bill does is changes something from criminal to noncriminal.

Senator Patten: The true measure of this would be if you were in Fargo in the summer time and you want to go out. You could ride your bike to the bar, drink all night long and ride your bike back home again. And if they stopped you they couldn't cite you with a criminal offense like if you were driving a car. That would be a very common scenario I guess.

Senator Dwyer: I just think back to Senator Hogue's speech on the floor when we were debating a bill. He said we have to analyze why we're here. If there's a problem that needs to be fixed because the constituents come that's one thing. But, if somebody just comes up with something looking for a solution for a nonexistent problem. I'm not sure the legislature should just be passing bills. That's why I questioned the other one too. (shared personal story)

Chairman Rust: I'm kind of thinking that with Representative Roers Jones that this is one of the bills that she has been working on with regard to the Justice Reinvented and some of those. The problem with a number of instances; and I don't know that one should have a lot of sympathy, but none the less, is once somebody gets charged with some heavy duty criminal offenses that it almost locks you out from getting a job thereafter a lot of times. So their only choices are to probably be on some assistance, get involved in selling drugs because they need some money; and I think that's what that is all about. But, it is a little bit of a slippery slope at the same time. But I think it has to do with the fact that there was a time that we wanted to kind of make a lot of things a felony. Basically when you make something a felony those people can't get a job hardly anymore. So what's the right answer here?

Also, I've passed out some information from Major Tom Iverson of the North Dakota Highway Patrol. Please see **Attachment #1** and an email that I received from Christopher Joseph from North Dakota Legislative Council, please see **Attachment #2**.

2019 SENATE STANDING COMMITTEE MINUTES

Transportation Committee
Lewis and Clark Room, State Capitol

HB 1154
3/14/2019
33762

- Subcommittee
 Conference Committee

Committee Clerk: Liz Stenehjem

Explanation or reason for introduction of bill/resolution:

A bill relating to a bicycle and a ridden animal being deemed a vehicle.

Minutes:

1 Attachment

Brief reminder of what bill is.

Josey Munson, Legislative Intern, Transportation Committee: Please see **Attachment #1** for information and testimony. In addition to the sections listed in the hand out I also found, at a later time a section called "the general rules of the road," it is 42 pages. In that there is a section that says, "it is unlawful unless otherwise declared in this chapter and it is a class b misdemeanor for any person to do any act forbidden or fail to perform any act required in this chapter" which makes all the rules of the road a criminal offense if they fail to follow them. That is chapter 39-10. It becomes a criminal violation in the code once it's an infraction or above, so an infraction, misdemeanor or a felony. It's a noncriminal offense if it's just a fee is the way Legislative Council described it to me.

Chairman Rust: Would you explain in your estimation what exactly this says?

Ms Munson: So it's saying for a noncriminal traffic offense in the chapters specified, a bike or animal is not going to be a vehicle. So if you read that in the inverse, it's saying that in those same chapters if it's a criminal offense a bike or animal will not be a vehicle.

Senator Bakke: So if a bike is driving recklessly and hits a car and does damage to the car and leaves without telling anyone, they're good to go? They can't be charged with hit and run, they can't be charged with damage upon striking, they can't be charged with any of that. The same for a horse

Ms Munson: They cannot be charged with these offenses.

Chairman Rust: They can't be charged with a criminal offense.

Ms Munson: They can be charge with a criminal offense, just not these criminal offenses. If there is something in the criminal code that they can be charged with that prosecutors can make stick they can be charged with that.

Chairman Rust: So there is more to this bill than meets the eye. Our options as I think about them are, 1. Kill the bill 2. If you were so inclined to say, ok we don't want a bike or horse to be for DUI or Actual Physical Control. Is to take it back to Legislative Council and narrow the language in this bill so only those two things are included.

Ms Munson: Going off that, if that's what you wanted to do; if you look at your bill, you would keep that section the same, use that same language but instead of applying it to all of those sections of code you would just apply it to the specific DUI offense.

Senator Clemens: I'm definitely just favoring to kill this bill. These are serious charges.

Senator Patten: I agree I think we need to kill the bill.

Senator Bakke: I really think someone needs to work a little more on this bill and define it a little more and I don't think that's necessarily our job. I think that bill needs to go back to the sponsors and they need to put more time and effort into it.

Senator Clemens: I move a **Do Not Pass**.

Senator Fors: I **Second** the Motion.

Roll Call Vote Taken:

6-0-0 Do Not Pass

Carrier: Senator Fors

**2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1154**

Senate Transportation Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Senator Clemens Seconded By Senator Fors

Senators	Yes	No	Senators	Yes	No
Senator Rust - Chairman	X		Senator Bakke	X	
Senator Clemens - Vice Chairman	X				
Senator Dwyer	X				
Senator Fors	X				
Senator Patten	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Fors

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

REPORT OF STANDING COMMITTEE

HB 1154: Transportation Committee (Sen. Rust, Chairman) recommends **DO NOT PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1154 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

HB 1154

From: Iverson, Maj. Thomas O. tiverson@nd.gov

Subject: HB 1065 and HB 1154

Date: Mar 7, 2019 at 5:25:51 PM

To: Rust, David S. drust@nd.gov

HB 1154 #1
3/7/19 pg1

Senator Rust,

Good afternoon. Thank you for stopping in and visiting with us about the potential concerns with HB 1065 and HB 1154.

HB 1065 raises the reporting requirement of a crash from \$1,000 to \$4,000. According to NDCC 39-08-05, the driver involved in a crash must stop at the scene and remain at the scene until they have fulfilled the requirements of 39-08-06. The driver must stop at the scene regardless of the dollar amount of damage. Failing to do so is a class B misdemeanor. In order to fulfill the requirements of 39-08-06, the driver involved in a crash with another vehicle must exchange information to include the drivers name, address, insurance company, vehicle registration information, and render aid if possible.

HB 1065 has no impact on those laws. If someone is involved in a crash resulting in minimal vehicle damage, they would still need to pull over and fulfill the obligations of 39-08-05 and 39-08-06. However, they would not need to report the crash to law enforcement, if the vehicle damage appeared to be less than \$4,000. Our troopers are often times called to crash scenes that end up with minimal vehicle damage. If the two parties have already exchanged information and it is apparent that the damage is less than \$1,000, an official crash report would not be needed.

Responding to crashes and completing the corresponding paperwork is a time consuming task, but it is something that our agency takes very seriously. That being said, I do not see any issues with increasing the threshold to \$4,000.

HB 1154 would essentially remove a bicycle or ridden animal from being considered a vehicle for purposes of criminal violations within NDCC 39-08 through 39-13. Below are two examples that have been provided from one of our troopers regarding this bill.

- "When considering to not allow bicycles and ridden animals to be subjected to the impaired driving laws, we must consider the enforcement aspect. As a traffic trooper in Fargo, I have personally heard the State Radio broadcasts of a traffic hazard that resulted from an intoxicated person riding a bicycle down Interstate 94 on a busy summer afternoon. Luckily, one of my coworkers was able to locate this person and arrest the rider for DUI, who blew a .26 on a preliminary breath test. Although this intoxicated rider was arrested for committing a violation of state law, it did not come without a price. As a result of this persons behavior, a crash resulted from other motorists slowing and stopping for the impaired person. Although this event resulted in an arrest and a minor crash, not all impaired bicyclists are so lucky."
- "Last June, I responded to a report of an injury crash that occurred near a rural subdivision north of West Fargo in Reile's Acres. In this incident, a female was riding

her bicycle on the shoulder of a county road at a peak travel time. She attempted to cross the roadway without looking behind her and was struck by an SUV. I arrived on scene within a few minutes, in time just to see the failed attempts by the paramedics to save her life. I then processed the scene just like many of our other numerous fatal crashes every year, and had to identify this female who possessed no identification and no way to run the owner of a bicycle. Meanwhile, I had to comfort the driver of the SUV who knew he just struck and killed a person on a bicycle. After finding out that the female lived only a few houses up from the intersection of the crash, I had to deliver the death notification to her husband and then her adult sons. I would later learn that her blood alcohol concentration was a .10, which would explain her lack of coordination and judgment which resulted in this crash.”

The trooper also mentioned that it would not take long for the public to know that this is a legal option when they have had too much to drink. I feel that this is a valid point, but I do understand the opposing argument that a person driving intoxicated on a bicycle poses less of a danger to the public than someone driving intoxicated in a motor vehicle. Ultimately, both options are unsafe and pose a danger to the driver, as well as the public.

In addition to DUI, there are other criminal violations that law enforcement would not be able to enforce if this would pass. For example, someone riding a bicycle would be able to crash into another vehicle and leave the scene of the crash. Law enforcement would not be able to enforce this law, even if the crash resulted in several thousand dollars of damage.

Another concern with this bill is fleeing a law enforcement officer. Technically, someone would be able to utilize a bicycle to flee a law enforcement officer, and the officer would not be able to charge them with fleeing a police officer under NDCC 39-10-71, as the bicycle would not be considered a vehicle. However, the person could still be charged with Refusing to Halt on a bicycle under NDCC 12.1-08-11. Refusing to Halt is a class B misdemeanor, versus a class A misdemeanor for Fleeing a Police Officer.

As an agency, we are not necessarily opposed to this bill, but rather wanted to point out a few concerns.

Major Thomas O. Iverson
Chief of Operations
North Dakota Highway Patrol
701-328-5141

NDLA, S TRN - Stenehjem, Elizabeth

From: Rust, David S.
Sent: Monday, March 11, 2019 7:37 PM
To: -Grp-NDLA Senate Transportation; NDLA, S TRN - Stenehjem, Elizabeth; NDLA, Intern 06
- Munson, Josey
Subject: HB 1154

FYI.

David S. Rust
Senator, District 2
PO Box 1198
Tioga, ND 58852
701-664-3508 (H)
701-216-0270 (C)

Begin forwarded message:

From: "Joseph, Christopher" <cjoseph@nd.gov>
Date: March 11, 2019 at 10:08:58 AM CDT
To: "Rust, David S." <drust@nd.gov>
Subject: **House Bill No. 1154**

Good morning Senator Rust,

This email is in response to your inquiry regarding the potential unintended consequences of House Bill No. 1154. As drafted, House Bill No. 1154 is an attempt to amend North Dakota Century Code Section 39-07-01 to exempt bicycles and ridden animals from being considered as vehicles for purposes of criminal offenses specified in North Dakota Century Code Chapter 39-08 through 39-13. For example, if House Bill No. 1154 passes, any vehicular offense codified between chapters 39-08 through 39-13 for which the penalty for a violation is above an infraction, would not apply to bicycles or ridden animals. Some of these offense would include DUI, reckless driving, and the duty to immediately stop or return with the vehicle as close as possible to the scene of an accident involving death or personal injury.

I hope this answers your inquiry Senator Rust. If you would like to discuss how a specific offense would apply to bicycles or ridden animals if House Bill No. 1154 passes or have any additional questions - please feel free to ask or stop by my office to discuss further! ☺

Sincerely,

Christopher S. Joseph
Legal Counsel
North Dakota Legislative Council
600 East Boulevard Ave
Bismarck, ND 58505
(701) 328-2916
cjoseph@nd.gov

Statutes that would be effected by HB 1154:

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

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

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

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

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

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

39-09-01. Basic rule - Penalty for violation.

39-10-26. Vehicle to stop or yield the right of way for authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.

39-10-65. Operation of motor vehicle, tractor, or other vehicle prohibited on flood protective works - Exception - Penalty.

HB 1154 #1
3/14/19 pg2

**CHAPTER 39-08
REGULATIONS GOVERNING OPERATORS**

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

1. A 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 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.
 - e. That individual refuses to submit to any of the following:
 - (1) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-06.2-10.2 if the individual is driving or is in actual physical control of a commercial motor vehicle; or
 - (2) A chemical test, or tests, of the individual's blood, breath, or urine to determine the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine, at the direction of a law enforcement officer under section 39-20-01.

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. If the individual violated subdivisions a, b, c, or d of this subsection and subdivision e of this subsection and the violations arose from the same incident, for purposes of suspension or revocation of an operator's license, the violations are deemed a single violation and the court shall forward to the department of transportation only the conviction for driving under the influence or actual physical control.

2.
 - a. An individual who operates a motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state who refuses to submit to a chemical test, or tests, required under section 39-06.2-10.2, 39-20-01, or 39-20-14, is guilty of an offense under this section.
 - b. An individual is not subject to an offense under this section for refusal to submit to an onsite screening test under section 39-20-14 if the person submits to a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident. Upon the individual's refusal to submit to an onsite screening test, the police officer shall inform the individual that the individual may remedy the refusal if the individual takes a chemical test under section 39-20-01 or 39-06.2-10.2 for the same incident.
3. An individual violating this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum penalty for violating this section is as provided in subsection 5. The court shall take judicial notice of the fact that an offense would be a subsequent offense if indicated by the records of the director or may make a subsequent offense finding based on other evidence.

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

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

- g. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section must be considered a prior offense if such offense was committed within the time limitations specified in this section.
 - h. If the penalty mandated by this section includes imprisonment or placement upon conviction of a violation of this section or equivalent ordinance, and if an addiction evaluation has indicated that the defendant needs treatment, the court may order the defendant to undergo treatment at an appropriate licensed addiction treatment program under subdivision g of subsection 1 of section 12.1-32-02 and the time spent by the defendant in the treatment must be credited as a portion of a sentence of imprisonment or placement under this section. A court may not order the department of corrections and rehabilitation to be responsible for the costs of treatment in a private treatment facility.
 - i. If the court sentences an individual to the legal and physical custody of the department of corrections and rehabilitation, the department may place the individual in an alcohol treatment program designated by the department. Upon the individual's successful completion of the alcohol treatment program, the department shall release the individual from imprisonment to begin the court-ordered period of probation. If there is not any court-ordered period of probation, the court shall order the individual to serve the remainder of the sentence of imprisonment on supervised probation and the terms and conditions must include participation in the twenty-four seven sobriety program and any terms and conditions of probation previously imposed by the court. Probation under this subsection may include placement in another facility or treatment program. If an individual is placed in another facility or treatment program after release from imprisonment, the remainder of the individual's sentence of imprisonment must be considered time spent in custody. Individuals incarcerated under this section subsequent to a second probation revocation are not eligible for release from imprisonment upon the successful completion of treatment.
 - j. If the individual has participated in the twenty-four seven sobriety program as a condition of pretrial release or for the purpose of receiving a temporary restricted operator's license under section 39-06.1-11, the sentencing court may give credit for the time the individual has already served on the twenty-four seven sobriety program when determining the amount of time the individual must serve on the twenty-four seven sobriety program for the purposes of probation, if that individual has not violated the twenty-four seven sobriety program before sentencing.
6. As used in subdivisions b and c of subsection 5, the term "imprisonment" includes house arrest. As a condition of house arrest, a defendant may not consume alcoholic beverages. The house arrest must include a program of electronic home detention and the defendant shall participate in the twenty-four seven sobriety program. The defendant shall defray all costs associated with the electronic home detention. For an offense under subdivision b or c of subsection 5, no more than ninety percent of the sentence may be house arrest.
7. As used in this title, participation in the twenty-four seven sobriety program under chapter 54-12 means compliance with sections 54-12-27 through 54-12-31, and

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

39-08-01.1. Prior offenses.

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

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

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

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

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

39-08-01.4. Driving while under the influence of alcohol while being accompanied by a minor - Penalty.

It is a class A misdemeanor for an individual who is at least twenty-one years of age to violate section 39-08-01 if the violation occurred while a minor was accompanying the individual in a motor vehicle. If an individual has a previous conviction for a violation of section 39-08-01.4, a violation of this section is a class C felony. An individual convicted under this section must be sentenced in accordance with subsection 5 of section 39-08-01.

39-08-01.5. Partial suspension of sentence for drug court completion.

1. Notwithstanding section 39-08-01, all but ten days of the minimum mandatory sentence required for a defendant charged with a third or subsequent violation of section 39-08-01 may be suspended on the condition the defendant successfully completes a drug court program approved by the supreme court.
2. For purposes of this section, 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.

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

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

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

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

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

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

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

1. No person may engage in exhibition driving of any vehicle on a highway, street, alley, sidewalk, or any public or private parking lot or area, nor may any person engage in a race, a speed competition, drag race or acceleration contest, test of physical endurance, or exhibition of speed or acceleration. Any person who violates this section by engaging in an act defined by subdivision b of subsection 2 must be assessed a fee of fifty dollars. Any person who violates this section by engaging in an act defined by subdivision a or c of subsection 2 must be assessed a fee of one hundred dollars.
2. As used in this section:
 - a. "Drag race" means the operation of two or more vehicles from a point side by side by accelerating rapidly in a competitive attempt to cause one vehicle to outdistance the other; or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speed or powers of acceleration of such vehicle or vehicles within a certain distance or time limit.
 - b. "Exhibition driving" means driving a vehicle in a manner which disturbs the peace by creating or causing unnecessary engine noise, tire squeal, skid, or slide upon

acceleration or braking; or driving and executing or attempting one or a series of unnecessarily abrupt turns.

- c. "Race" means the use of one or more vehicles in an attempt to outgain, outdistance, or to arrive at a given distance ahead of another vehicle or vehicles; or the use of one or more vehicles to willfully prevent another vehicle from passing the racing vehicle or vehicles, or to test the physical stamina or endurance of the persons driving the vehicles over a long-distance driving route.
- 3. Nothing in this section shall be construed as prohibiting drag racing, exhibition driving, or similar events when carried out in an organized manner on a track or other privately owned area specifically set aside and used solely for such purposes by drivers of motor vehicles, including snowmobiles.

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

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

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

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

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

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

The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible but shall forthwith return to and in every event shall remain at the scene of such accident until the driver has fulfilled the requirements of section 39-08-06. Every such stop must be made without obstructing traffic more than is necessary. Any person failing to stop or comply with said requirements under such circumstances is guilty of a class B misdemeanor.

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

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

the person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary or if the carrying is requested by the injured person.

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

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

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

The driver of any vehicle involved in an accident resulting only in damage to highway fixtures or other property shall take reasonable steps to locate and notify the owner or person in charge of such property of such fact and of the driver's name and address and of the registration number of the vehicle the driver is driving and shall upon request and if available exhibit the driver's operator's or chauffeur's license and shall make report of such accident when and as required in section 39-08-09.

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

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

39-08-10. Officer to report.

Every law enforcement officer, who in the regular course of duty investigates a motor vehicle accident required to be reported as provided in section 39-08-09 either at the time and at the scene of the accident or thereafter by interviewing the participants, or witnesses, shall make and promptly forward to the director a report of the accident in a format prescribed by the director.

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

1. In the event of serious injury to or death of any person, under circumstances leading to the notification of a law enforcement agency, the investigating law enforcement agency shall, upon positive identification of the person or persons involved, be responsible for immediately notifying the immediate family of the person or persons seriously injured

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**CHAPTER 39-09
SPEED RESTRICTIONS**

39-09-01. Basic rule - Penalty for violation.

No person may drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding roadway, and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions. Any person who drives a vehicle upon a highway or private or public property open to the public for the operation of motor vehicles without heed to the requirements or restrictions of this section has committed careless driving and must be assessed a fee of thirty dollars.

Any person who, by reason of careless driving as herein defined, causes and inflicts injury upon the person of an operator of snow removal equipment engaged in snow removal operations or causes damage in excess of one thousand dollars to snow removal equipment engaged in snow removal is guilty of an infraction.

As used in this section, "snow removal equipment" means a vehicle that is operated by a person employed by or on behalf of an authority in charge of the maintenance of the highway to perform winter maintenance snow and ice removal, including plowing, hauling away, salting, and sanding.

39-09-01.1. Care required in operating vehicle.

Any person driving a vehicle upon a highway shall drive the vehicle in a careful and prudent manner, having due regard to the traffic, surface, and width of the highway and other conditions then existing, and shall give such warnings as are reasonably necessary for safe operation under the circumstances. No person may drive any vehicle upon a highway in a manner to endanger the life, limb, or property of any person.

39-09-02. Speed limitations.

1. Subject to the provisions of section 39-09-01 and except in those instances when 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].

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2. Except when directed to proceed by a police officer, every driver of a vehicle approaching a stop sign shall stop at a clearly marked stop line, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After having stopped, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time when such driver is moving across or within the intersection or junction of roadways.
3. The driver of a vehicle approaching a yield sign shall in obedience to such sign slow down to a speed reasonable for the existing conditions and, if required for safety to stop, shall stop at a clearly marked stop line, or, if none, before entering the crosswalk on the near side of the intersection, or, if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering it. After slowing or stopping, the driver shall yield the right of way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time such driver is moving across or within the intersection or junction of roadways. Provided, however, that if a driver is involved in a collision with a vehicle in the intersection or junction of roadways after driving past a yield sign without stopping, such collision is deemed prima facie evidence of the driver's failure to yield the right of way.

39-10-25. Vehicle entering roadway.

The driver of a vehicle about to enter or cross a roadway from any place other than another roadway shall yield the right of way to all vehicles approaching on the roadway to be entered or crossed.

39-10-26. Vehicle to stop or yield the right of way for authorized emergency vehicle or vehicle used for maintaining the state highway system - Penalty.

1. Upon the immediate approach of an authorized emergency vehicle displaying a visible flashing, revolving, or rotating blue, white, or red light, the driver of every other vehicle shall yield the right of way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the roadway clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed, except when otherwise directed by a police officer.
2. If an authorized emergency vehicle is parked or stopped at the scene of an emergency and is displaying a flashing, revolving, or rotating blue, white, or red light, approaching traffic shall move to the right-hand edge or curb of the roadway and shall stop, but once having stopped, traffic may proceed past the scene at its own risk when the roadway is clear, except when otherwise directed by a police officer. If an authorized emergency vehicle is otherwise parked or stopped on the interstate system or on a multilane highway outside the limits of a city, and the authorized emergency vehicle is displaying a flashing, revolving, or rotating amber, blue, white, or red light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the authorized emergency vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
3. If a vehicle operated by or under the control of the director used for maintaining the state highway system is parked or stopped on the interstate system or on a multilane highway outside the limits of a city, and the vehicle is displaying a flashing, revolving, or rotating amber or white light, the driver of an approaching vehicle shall proceed with caution and yield the right of way by moving to a lane that is not adjacent to the vehicle if the move may be made with due regard to safety and traffic conditions or if not, the driver shall proceed with due caution, reduce the speed of the vehicle, and maintain a safe speed for the road conditions.
4. This section does not operate to relieve the driver of an authorized emergency vehicle or a vehicle operated by or under the control of the director used for maintaining the

state highway system from the duty to drive with due regard for the safety of all persons using the highway.

- 5. a. Any individual who violates subsection 2 and causes an accident with an authorized emergency vehicle while the authorized emergency vehicle is displaying a visible flashing, revolving, or rotating amber, blue, white, or red light is guilty of an infraction.
- b. An individual who violates subsection 3 and causes an accident with a vehicle operated by or under the control of the director used for maintaining the state highway system while the vehicle is displaying a visible flashing, revolving, or rotating amber or white light is guilty of an infraction.

39-10-26.1. Highway construction and maintenance.

- 1. The driver of a vehicle shall yield the right of way to any authorized vehicle or pedestrian actually engaged in work upon a highway within any highway construction or maintenance area indicated by official traffic-control devices.
- 2. The driver of a vehicle shall yield the right of way to any authorized vehicle obviously and actually engaged in work upon a highway wherever such vehicle displays flashing lights meeting the requirements of section 39-21-28.

39-10-26.2. Permitting use of vehicle to violate section 39-10-26 prohibited - Presumption of permission - Defense - Dual prosecution prohibited.

The registered owner of a motor vehicle may not permit that motor vehicle to be operated in violation of section 39-10-26. If a motor vehicle is seen violating section 39-10-26, it is a disputable presumption that the registered owner of the motor vehicle permitted that violation. It is a defense to a charge of violating this section that the registered owner of the vehicle was not operating the vehicle, if that registered owner identifies the person authorized by that owner to operate the motor vehicle at the time of the violation of section 39-10-26, or if that motor vehicle had been taken without the registered owner's permission. A person may not be charged both with violating this section and with violating section 39-10-26. Violation of this section is not a lesser included offense of violation of section 39-10-26.

39-10-27. Pedestrian obedience to traffic-control devices and traffic regulations.

- 1. A pedestrian shall obey the instructions of any official traffic-control device specially applicable to the pedestrian, unless otherwise directed by a police officer.
- 2. Pedestrians are subject to traffic-control and pedestrian-control signals as provided for in sections 39-10-05 and 39-10-06.

39-10-28. Pedestrian's right of way in crosswalk.

- 1. When traffic-control signals are not in place or not in operation, the driver of a vehicle shall yield the right of way, slowing down or stopping if need be to so yield, to a pedestrian crossing the roadway within a crosswalk when the pedestrian is upon the half of the roadway upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the roadway as to be in danger.
- 2. No pedestrian may suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close as to constitute an immediate hazard.
- 3. Subsection 1 does not apply under the conditions stated in subsection 2 of section 39-10-29.
- 4. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the highway, the driver of any other vehicle approaching from the rear may not overtake and pass such stopped vehicle.

39-10-63. Carrying articles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-63.1. Lamps and other equipment on bicycles.

Repealed by S.L. 1975, ch. 348, § 17.

39-10-64. Driving through safety zone prohibited.

No vehicle shall at any time be driven through or within a safety zone.

39-10-65. Operation of motor vehicle, tractor, or other vehicle prohibited on flood protective works - Exception - Penalty.

1. Unless authorized by the authority in charge thereof, no person shall operate a motor vehicle, tractor, or other vehicle upon or across any flood protective works, including any dike or flood protective works constructed by a state or federal agency, or by any municipality or local subdivision of the state.
2. Any person violating the provisions of this section shall be liable to any person suffering injury as a result of the violation; and in addition, shall be guilty of a class B misdemeanor.

39-10-66. Vehicle approaching a yield right of way sign.

Repealed by S.L. 1963, ch. 283, § 20.

39-10-67. Moving heavy equipment at railroad grade crossing.

1. No person may operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles [16.09 or less kilometers] per hour or a vertical body or load clearance of less than one-half inch per foot [12.7 millimeters] of the distance between any two adjacent axles or in any event of less than nine inches [22.86 centimeters], measured above the level surface of a roadway, upon or across any tracks at a railroad grade crossing without first complying with this section.
2. Before making any such crossing, the person operating or moving any such vehicle or equipment shall first stop the same not less than fifteen feet [4.57 meters] nor more than fifty feet [15.24 meters] from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and may not proceed until the crossing can be made safely.
3. No such crossing may be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing must be under the flagman's direction.

39-10-68. Stop when traffic obstructed.

No driver may enter any intersection or a marked crosswalk or drive onto a railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle the driver is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains notwithstanding any traffic-control signal indication to proceed.

39-10-69. Charging violation and proving negligence in civil action.

1. In every charge of violation of any speed regulation, the complaint and the summons or notice to appear must specify the speed at which the defendant is alleged to have driven and also the maximum speed applicable within the district or at the location.
2. The provision in this title declaring maximum speed limitations may not be construed to relieve the plaintiff in any action from the burden of proving negligence on the part of the defendant as the proximate cause of the accident.