

JOURNAL OF THE HOUSE

Forty-eighth Legislative Assembly

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SIXTY-SIXTH DAY

Bismarck, April 9, 1983

The House convened at 9:30 a.m., with Speaker Kelly presiding.

The prayer was offered by Rev. Don Andrews, McCabe United Methodist Church, Bismarck.

ROLL CALL

The roll was called and all members were present, except Representatives Aubol, Gerl, Gunsch, Kingsbury, Kretschmar, Lipsiea, Nalewaja, Olafson, Peterson, Retzer, Richard, Rued, Stofferahn, Unhjem, and Whalen.

A quorum was declared by the Speaker.

REVISION AND CORRECTION OF THE JOURNAL

MADAM SPEAKER: Your Committee on Revision and Correction of the Journal has carefully examined the Journal of the Sixty-fifth day and finds the same to be correct.

REP. LAUGHLIN, Chairman

REP. BOYLE MOVED that the report be adopted, which motion prevailed.

MESSAGES FROM THE SENATE  
SENATE CHAMBER

MADAM SPEAKER: I have the honor to return herewith the following which the Senate has failed to pass:

HB 1236, HB 1687, HB 1729

Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to return herewith the following on which the Senate has adopted the conference committee report on the same:

HB 1420

Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to return herewith HB 1644 and HB 1724 which the Senate has amended as follows:

## SENATE AMENDMENTS TO HB 1644

- On page 1 of the engrossed bill, line 3, after the word "assistance" and before the period insert the words "; and to provide an effective date"
- On page 1 of the engrossed bill, after line 28, insert the following new section:

"SECTION 2. EFFECTIVE DATE. This Act becomes effective on July 1, 1985."

And renumber the lines and pages accordingly

## SENATE AMENDMENTS TO HB 1724

- On page 1 of the engrossed bill, line 1, after the word "to", insert the words "provide for distribution of certain education aid funds; to"
- On page 2 of the engrossed bill, line 5, after the word "to" insert the following words: "the sinking fund established for payment of the state of North Dakota water development bonds, southwest pipeline series, and any moneys in excess of the sum necessary to maintain the accounts within the sinking fund and for the payment of principal and interest on the bonds, shall be credited to"
- On page 2 of the engrossed bill, line 6, overstrike the second comma and the second word "to" and insert immediately thereafter the words "The resources trust fund shall"
- On page 2 of the engrossed bill, line 7, after the word "and" insert the words "the funds therein"
- On page 2 of the engrossed bill, line 10, overstrike the words "Provided, the first fifteen"
- On page 2 of the engrossed bill, overstrike lines 11 through 17
- On page 2 of the engrossed bill, line 18, overstrike the words "provided by the legislative assembly."
- On page 2 of the engrossed bill, line 22, overstrike the word "conservation"
- On page 2 of the engrossed bill, line 23, after the word "of" insert the word "comprehensive", and after the word "facilities" insert the words "including rural water systems"

On page 3 of the engrossed bill, after line 31, insert the following new section:

"SECTION 4. DISTRIBUTION OF EDUCATION AID FUNDS. If funds appropriated for distribution to school districts for per pupil and transportation aid become available after May first, the superintendent shall distribute the payments no later than June thirtieth."

And renumber the lines, sections, and pages accordingly  
Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to return herewith the following which the Senate has passed unchanged:

HCR 3094, HCR 3095

Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to transmit herewith the following on which the Senate has adopted the conference committee reports and subsequently passed the same:

SB 2092, SB 2173, SB 2219, SB 2373, SB 2431

Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to transmit herewith the following which the President has signed and your signature is respectfully requested:

SB 2249, SB 2250, SB 2265, SB 2500, SCR 4058

Very respectfully,  
LEO LEIDHOLM, Secretary

SENATE CHAMBER

MADAM SPEAKER: I have the honor to inform you that the Senate has reconsidered its action whereby it did not concur with the House amendments to SCR 4025, and now wishes to inform you that it does now concur in the House amendments to SCR 4025, and subsequently failed to pass the same. Also, the Senate has dissolved the Senate Conference Committee on SCR 4025.

Very respectfully,  
LEO LEIDHOLM, Secretary

## SENATE CHAMBER

MADAM SPEAKER: I have the honor to inform you that the Senate has refused to concur in the House amendments to SB 2001, and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2001: Sens. Streibel, Tennefos, Heigaard

Very respectfully,  
LEO LEIDHOLM, Secretary

## APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER ANNOUNCED the following appointment to a Conference Committee on SB 2095:

Reps. Riehl, Laughlin, Timm

## SIGNING OF BILLS AND RESOLUTIONS

THE CHIEF CLERK ANNOUNCED that the Speaker signed the following:

SB 2032, SB 2150, SB 2187, SB 2205, SB 2206, SB 2394

CHARLES FLEMING, Chief Clerk

## MESSAGES TO THE SENATE

## HOUSE CHAMBER

MR. PRESIDENT: I have the honor to return herewith the following which the Speaker has signed:

SB 2032, SB 2150, SB 2187, SB 2205, SB 2206, SB 2394

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## HOUSE CHAMBER

MR. PRESIDENT: I have the honor to return herewith the following which the House has amended:

SB 2313

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## REPORT OF PROCEDURAL COMMITTEE

MADAM SPEAKER: Your Committee on Enrollment and Engrossment respectfully reports that it has examined the following bills and finds the same correctly enrolled:

HB 1044, HB 1370, HB 1400, HB 1421, HB 1583, HB 1661

REP. G. MARTIN, Chairman

REP. SHIDE MOVED that the report be adopted, which motion prevailed.

SATURDAY, APRIL 9, 1983

2527

PRESENTATION OF PETITIONS AND COMMUNICATIONS

Allen I. Olson  
Governor

April 8, 1983

The Honorable Tish Kelly  
Speaker of the House  
House Chambers  
State Capitol  
Bismarck, North Dakota 58505

Dear Madam Speaker:

This is to inform you that on April 8, 1983, I signed the following:

HB 1003, HB 1269, HB 1333, HB 1627, HB 1701.

Sincerely,

ALLEN I. OLSON  
Governor

REQUEST

REP. RICHARD REQUESTED that the record show that he and Representatives Hughes and Aubol were in a conference committee meeting when the roll was called this morning, which request was granted.

MOTION

REP. BACKES MOVED that the House stand in recess until 11:00 a.m., which motion prevailed.

THE HOUSE RECONVENED pursuant to recess taken, with Speaker Kelly presiding.

MESSAGE TO THE SENATE  
HOUSE CHAMBER

MR. PRESIDENT: I have the honor to inform you that the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

SB 2095: Reps. Riehl, Laughlin, Timm

Very respectfully,  
CHARLES FLEMING, Chief Clerk

ANNOUNCEMENT

SPEAKER KELLY ANNOUNCED that the Conference Committee on SCR 4025 was dissolved.

## MOTION

REP. MERTENS MOVED that HB 1017 be messaged to the Governor for his signature, which motion prevailed.

## APPOINTMENT OF CONFERENCE COMMITTEE

THE SPEAKER ANNOUNCED the following appointment to a Conference Committee on SB 2001:

Reps. Boyle, Sanstead, Unhjem

## REQUEST

REP. O'SHEA REQUESTED that the House stand in a moment of silent prayer in honor of the members of the armed forces who lost their lives in Vietnam, which request was granted.

THE HOUSE STOOD in a moment of silent prayer in memory of members of the armed forces who lost their lives in Vietnam.

## MOTION

REP. BACKES MOVED that the House stand in recess until 1:00 p.m., which motion prevailed.

THE HOUSE RECONVENED pursuant to recess taken, with Speaker Kelly presiding.

## REPORT OF PROCEDURAL COMMITTEE

MADAM SPEAKER: Your procedural Committee on Delayed Bills respectfully reports that it has considered a request for the introduction of HB 1736, which request has been approved.

REP. BACKES, Chairman

## FIRST READING OF HOUSE BILL

Rep. Backes introduced:

(Approved by the Committee on Delayed Bills)

HB 1736: A BILL for an Act making an appropriation for defraying the expenses of the weather modification board of the state of North Dakota; and to repeal House Bill No. 1017, as approved by the forty-eighth legislative assembly, relating to an appropriation to the weather modification board.

Was read the first time and referred to the Committee on Appropriations.

## MESSAGE TO THE SENATE

## HOUSE CHAMBER

MR. PRESIDENT: I have the honor to inform you that the Speaker has appointed as a conference committee to act with a like committee from the Senate on:

SB 2001: Reps. Boyle, Sanstead, Unhjem

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## MOTION

REP. BACKES MOVED, pursuant to Section 79 of the Constitution of the State of North Dakota, that the House consider HB 1478 at this time, which motion prevailed.

RECONSIDERATION OF VETOED MEASURES  
SECOND READING OF HOUSE BILL

HB 1478: A BILL for an Act to create and enact section 10-06-04.1 of the North Dakota Century Code, relating to the application of the corporate farming law to certain nonprofit organizations and trusts.

Which has been read.

## ROLL CALL

The question being on the final passage of the bill, as enrolled, over the Governor's veto, the roll was called and there were 41 YEAS, 54 NAYS, 11 ABSENT AND NOT VOTING.

YEAS: Anderson, R.; Black; Conmy; Dotzenrod; DuBord; Eagles; Gates; Gorder; Hamerlik; Hanson, L.; Hausauer; Horgan; Hughes; Kent; Kloubec; Knudson; Koehn; Kuchera; Lang; Lardy; Larson, R.; Lloyd; Martin, C.; Martinson; Melby; Moore; Murphy; Olsen, D.; Peltier; Retzer; Riley; Rued; Schindler; Schneider; Shide; Strinden; Swiontek; Thompson; Timm; Wentz; Wold

NAYS: Anderson, C.; Aubol; Backes; Boyle; Brokaw; DeMers; Erdman; Gerl; Goetz; Gullickson; Halmrast; Haugland; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Jacobson; Keller; Koski; Larson, B.; Laughlin; Lautenschlager; Linderman; Martin, G.; Meier, A.; Meiers, R.; Mertens; Meyer, R.; Meyer, W.; Mushik; Nicholas; Nowatzki; O'Connell; Olson, A.; Opedahl; O'Shea; Pomeroy, E.; Pomeroy, G.; Rayl; Rice; Richard; Riehl; Sanstead; Schoenwald; Shockman; Sinner; Solberg; Vander Vorst; Vig; Watne; Williams, A.; Williams, C.; Williams, W.; Speaker Kelly

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Kretschmar; Lipsiea; Nalewaja; Olafson; Peterson; Stofferahn; Unhjem; Whalen

So the bill was declared lost and the Governor's veto was sustained.

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## REQUESTS

REP. A. OLSON REQUESTED that the record show that she intended to vote "yea" instead of "nay" on HB 1478, which request was granted.

REP. RICE REQUESTED that the record show that he intended to vote "yea" instead of "nay" on HB 1478, which request was granted.

REP. HORGAN REQUESTED that the record show that he intended to vote "yea" instead of "yea", on HB 1478, which request was granted.

#### REPORT OF PROCEDURAL COMMITTEE

MADAM SPEAKER: Your procedural Committee on Delayed Bills respectfully reports that it has considered a request for the introduction of HCR 3099 and HCR 3100, which request has been approved.

REP. BACKES, Chairman

#### FIRST READING OF HOUSE CONCURRENT RESOLUTIONS

Rep. Schoenwald introduced:

(Approved by the Committee on Delayed Bills)

HCR 3099: A concurrent resolution urging members of the United States Congress to actively support and vote favorably on H.R. 1646, the Railroad Retirement Solvency Act of 1983. Was read the first time and referred to the Committee on Transportation.

Reps. Strinden, Backes introduced:

(Approved by the Committee on Delayed Bills)

HCR 3100: A concurrent resolution directing the Legislative Council to study the application of the corporate farming law to nonprofit corporations and trusts. Was read the first time and referred to the Committee on Agriculture.

#### MOTION

REP. BACKES MOVED that, immediately following consideration of the conference committee reports that, where appropriate, the bills be deemed properly engrossed and placed on the calendar, as amended, for second reading and final passage, which motion prevailed.

#### REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred Engrossed HB 1429 has had the same under consideration and recommends that the SENATE RECEDE from its amendments as found on pages 2233-2236 of the House Journal and that Engrossed HB 1429 be amended as follows:

On page 1 of the engrossed bill, line 2, after the second comma insert the numerals "54-06-09,"

On page 2 of the engrossed bill, line 24, remove the overstrike over the word "~~five~~" and delete the word "six" and the words "and fifty cents"

- On page 2 of the engrossed bill, line 26, remove the overstrike over the word "~~eight~~", delete the word "~~ten~~", and remove the overstrike over the words "~~and fifty~~"
- On page 2 of the engrossed bill, line 27, remove the overstrike over the word "~~sents~~"
- On page 5 of the engrossed bill, after line 2, insert the following new section:

"SECTION 4. AMENDMENT. Section 54-06-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

54-06-09. Mileage and travel expense of state officers and employees. State officials, whether elective or appointive, and their deputies, assistants, and clerks, or other state employees, entitled by law to be reimbursed for mileage or travel expense, shall be allowed and paid for mileage and travel expense the following amounts:

1. The sum of ~~twenty-five~~ twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle. The sum of thirty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by private airplane. Mileage by private aircraft shall be computed by actual air mileage when only one state employee or official is traveling; if two or more state employees or officials are traveling by private aircraft, the actual mileage shall be based on the road mileage between the geographical points. Reimbursement for private airplane travel shall be calculated as follows:
  - a. If reimbursement is for one properly authorized and reimbursable passenger, reimbursement shall be paid on a per-mile basis as provided in this subsection.
  - b. If reimbursement is claimed for a chartered private aircraft, reimbursement may not exceed the cost of regular coach fare on a commercial flight, if one is scheduled between the

point of departure, point of destination, and return, for each properly authorized and reimbursable passenger on the charter flight; or, where there is no such regularly scheduled commercial flight, the actual cost of the charter.

No reimbursement shall be paid for leased private aircraft. In order to be reimbursed for the chartering of a private aircraft pursuant to subdivision b, the charter agreement must receive prior approval from the director of the office of management and budget who shall take comparable travel costs and the savings of time into account in making his decision. If only one person shall engage in such travel in a motor vehicle exceeding at any geographical point one hundred fifty miles [241.40 kilometers] beyond the borders of this state, reimbursement shall be limited to eighteen cents per mile [1.61 kilometers] for the out-of-state portion of the travel beyond the first one hundred fifty miles [241.40 kilometers]. When official travel is by motor vehicle or airplane owned by the state or by any department or political subdivision thereof, no allowance shall be made or paid for such mileage.

2. Except as provided in subsection 1, when travel is by rail or certificated air taxi commercial operator or other common carrier, including regularly scheduled flights by airlines, the amount actually and necessarily expended therefor in the performance of official duties.
3. Notwithstanding the other provisions of this section, state employees permanently located outside the state or on assignments outside the state for an indefinite period of time, exceeding at least thirty consecutive days, shall be allowed and paid ~~twenty-five~~ twenty cents per mile [1.61 kilometers] for each mile [1.61 kilometers] actually and necessarily traveled in the performance of official duty when such travel is by motor vehicle, and the one hundred fifty mile [241.40 kilometer] restriction imposed by subsection 1 shall not apply.

Before any allowance for any such mileage or travel expenses shall be made, the official, deputy, assistant, clerk, or other employee shall file with the director of the office of management and budget an itemized statement showing the mileage traveled, the hour of departure and return, the days when and how traveled, the purpose thereof, and such other information and documentation as may be prescribed by rule of the office of the budget or specifically requested by such office, verified by his certification. The statement shall be submitted to the office of the budget for approval and shall be paid only when approved by the office of the budget. The head of any department, institution, or agency of this state may, for any person or persons under his authority, set a rate of no less than twenty cents per mile {1.61 kilometers} and no more than twenty-five cents per mile {1.61 kilometers}."

And renumber the lines, sections, and pages accordingly

For the Senate: Sens. Thane, Streibel, Tallackson

For the House: Reps. R. Meyer, Watne, Martinson

REP. R. MEYER MOVED that the report be adopted, which motion prevailed.

#### SECOND READING OF HOUSE BILL

HB 1429: A BILL for an Act to amend and reenact sections 15-10-25.1, 44-08-04, 44-08-04.3, and 54-06-10 of the North Dakota Century Code, relating to state employee travel allowances and moving expenses and the requirement for the elected state officials and presidents of institutions of higher education to receive out-of-state travel authorization.

Which has been read.

#### ROLL CALL

The question being on the final passage of the bill as amended, the roll was called and there were 61 YEAS, 34 NAYS, 11 ABSENT AND NOT VOTING.

YEAS: Anderson, C.; Anderson, R.; Backes; Brokaw; Conmy; Eagles; Erdman; Gates; Goetz; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hughes; Jacobson; Keller; Kent; Kloubec; Knudson; Koehn; Lang; Larson, B.; Larson, R.; Linderman; Martin, C.; Martinson; Meiers, R.; Melby; Mertens; Meyer, R.; Moore; Murphy; Mushik; O'Connell; Olsen, D.; Olson, A.; Opedahl; O'Shea; Peltier; Rayl; Retzer; Rice; Riley; Schindler; Shide; Shockman; Sinner; Solberg; Strinden; Swiontek; Thompson; Timm; Vander Vorst; Watne; Wentz; Williams, A.; Williams, C.; Wold; Speaker Kelly

NAYS: Aubol; Black; Boyle; DeMers; Dotzenrod; DuBord; Gerl; Gorder; Gullickson; Halmrast; Hoffner; Serenus; Hoffner, S. F.; Horgan; Koski; Kuchera; Lardy; Laughlin; Lautenschlager; Lloyd; Martin, G.; Meier, A.; Meyer, W.; Nicholas; Nowatzki; Pomeroy, E.; Pomeroy, G.; Richard; Riehl; Rued; Sanstead; Schneider; Schoenwald; Vig; Williams, W.

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Kretschmar; Lipsiea; Nalewaja; Olafson; Peterson; Stofferahn; Unhjem; Whalen

HB 1429 passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred Engrossed HB 1528 has had the same under consideration and recommends that the SENATE RECEDE from its amendments as found on page 2018 of the House Journal and that Engrossed HB 1528 be amended as follows:

That the Senate recede from its amendments and that Engrossed House Bill No. 1528, be further amended as follows:

On page 1 of the engrossed bill, line 24, delete the word "Private"

On page 1 of the engrossed bill, delete lines 25 through 28

On page 2 of the engrossed bill, delete lines 1 through 8

On page 2 of the engrossed bill, line 9, delete the words "and health services." and insert in lieu thereof the following:

"Consultation services provided to an organization or an agency are not considered to be the private practice of social work.

5. Social work practice consists of the professional application of social work values, principles, and techniques in: helping people obtain tangible services; counseling; psychotherapy with individual, families, and groups; helping communities or groups to improve social and health services; providing social casework; administration of a social work program; social work education; social work research; or any combination of these."

On page 2 of the engrossed bill, line 15, after the word "surgeons," insert the word "nurses,"

On page 2 of the engrossed bill, delete lines 26 through 29 and insert in lieu thereof the following:

- "3. Nothing in this Act shall prevent the employment of, or volunteering by, individuals in nonprofit agencies or community organizations provided these persons do not hold themselves out to the public as being social workers.
4. Nothing in this Act shall prevent the employment of social work designees by hospitals, intermediate care facilities, or nursing homes provided these persons work under the direction of a social worker or social work consultant licensed under this Act."

On page 7 of the engrossed bill, delete lines 8 through 11

On page 7 of the engrossed bill, delete lines 31 through 34

On page 8 of the engrossed bill, delete lines 1 through 15

And renumber the lines, subsections, sections, and pages accordingly

For the Senate: Sens. Stenehjem, Todd, J. Meyer

For the House: Reps. DeMers, R. Meiers, Peltier

REP. DEMERS MOVED that the report be adopted, which motion prevailed.

#### SECOND READING OF HOUSE BILL

HB 1528: A BILL for an Act to provide for the licensing and regulation of persons engaged in the practice of social work and the creation of a state board of social work examiners; to provide a penalty; and to provide an effective date.

Which has been read.

#### ROLL CALL

The question being on the final passage of the bill as amended, the roll was called and there were 83 YEAS, 8 NAYS, 15 ABSENT AND NOT VOTING.

YEAS: Anderson, C.; Aubol; Backes; Black; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Gates; Goetz; Gorder; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle;

Hoffner, Serenus; Hoffner, S. F.; Horgan; Jacobson;  
 Keller; Kent; Kloubec; Knudson; Koehn; Koski; Kuchera;  
 Lang; Lardy; Larson, B.; Larson, R.; Laughlin;  
 Lautenschlager; Linderman; Lloyd; Martin, C.;  
 Martin, G.; Meier, A.; Meiers, R.; Mertens; Meyer, R.;  
 Meyer, W.; Moore; Mushik; Nicholas; Nowatzki;  
 O'Connell; Olsen, D.; Opedahl; O'Shea; Peltier;  
 Pomeroy, E.; Pomeroy, G.; Rayl; Retzer; Rice; Richard;  
 Riehl; Riley; Sanstead; Schindler; Schneider;  
 Schoenwald; Shockman; Sinner; Solberg; Swiontek;  
 Thompson; Vander Vorst; Vig; Watne; Wentz;  
 Williams, A.; Williams, C.; Williams, W.; Wold;  
 Speaker Kelly

NAYS: Anderson, R.; Hughes; Melby; Murphy; Olson, A.;  
 Rued; Shide; Timm

ABSENT AND NOT VOTING: Boyle; Gerl; Gunsch; Hanson, O.;  
 Kingsbury; Kretschmar; Lipsiea; Martinson; Nalewaja;  
 Olafson; Peterson; Stofferahn; Strinden; Unhjem; Whalen

HB 1528 passed and the title was agreed to.

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#### REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred Reengrossed SB 2092 has had the same under consideration and recommends that the SENATE RECEDE from its amendments as found on page 2146 of the House Journal and that Reengrossed SB 2092 be amended as follows:

That the House recede from its amendments as found on pages 1895 through 1897 and page 2101 of the House Journal and that reengrossed Senate Bill No. 2092 be further amended as follows:

On page 1 of the reengrossed bill, line 5, delete the word  
 "a"

On page 1 of the reengrossed bill, line 6, delete the words  
 "designated fund in the Bank of North Dakota" and  
 insert in lieu thereof the words "an interest bearing  
 fund in the state treasury"

On page 1 of the reengrossed bill, line 8, after the word  
 "penitentiary" and before the period insert the words  
 "; and providing an appropriation"

On page 1 of the reengrossed bill, line 21, after the word  
 "transaction" insert the words "must allow for the  
 submission of bids pursuant to a notice published in  
 at least one official county newspaper; except that  
 the sale, exchange, or transaction"

- On page 2 of the reengrossed bill, line 1, after the word "All" insert the word "legal"
- On page 2 of the reengrossed bill, line 2, after the word "approved" insert the words "as to form and legality"
- On page 2 of the reengrossed bill, line 9, delete the words "Bank of North Dakota" and insert in lieu thereof the words "state treasury"
- On page 2 of the reengrossed bill, line 11, after the word "land" insert the words "and facilities"
- On page 2 of the reengrossed bill, line 13, after the word "penitentiary" and before the period insert the words "and for penitentiary renovation"
- On page 2 of the reengrossed bill, after line 13, insert the following new section:

"SECTION 2. APPROPRIATION. There is hereby appropriated out of any moneys in the state penitentiary land fund, not otherwise appropriated, the sum of \$11,000,000, or so much thereof as may be necessary, to the director of institutions who is hereby instructed to use the money only for the purpose of purchasing enough replacement land with facilities for the use of the state penitentiary which will require the employment of as many or more inmates as are now employed in the penitentiary farming and ranching operation, and only thereafter may use any remaining funds for the renovation of penitentiary facilities. This provision is for the biennium beginning July 1, 1983, and ending June 30, 1985."

And renumber the lines, sections, and pages accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

The amendment to reengrossed Senate Bill No. 2092 requires any sale, exchange, or transaction involving Penitentiary lands to allow for submission of public bids.

The bill provides for the sale of Penitentiary land. The proceeds of any sales shall be used to purchase additional farm and ranch property for the Penitentiary and for Penitentiary renovation. It is intended the future Legislative Assemblies will reimburse the State Penitentiary land fund for any moneys used for Penitentiary renovation.

For the Senate: Sens. Thane, Naaden, Stromme

For the House: Reps. Mushik, Mertens, Peterson

REP. MUSHIK MOVED that the report be adopted, which motion prevailed.

### SECOND READING OF SENATE BILL

Which has been read.

SB 2092: A BILL for an Act to create and enact a new section to chapter 54-21 of the North Dakota Century Code, relating to authorizing the director of institutions with the governor's approval to sell or exchange penitentiary land, permitting the mining or extraction of gravel or other mineral or oil resources, and establishing an interest bearing fund in the state treasury to be used for the acquisition of additional farmland and ranchland for the state penitentiary; and providing an appropriation.

### ROLL CALL

The question being on the final passage of the bill as amended, the roll was called and there were 90 YEAS, 2 NAYS, 14 ABSENT AND NOT VOTING.

YEAS: Anderson, C.; Anderson, R.; Backes; Black; Boyle; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Gates; Gerl; Goetz; Gorder; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Horgan; Hughes; Jacobson; Keller; Kent; Kloubec; Knudson; Koehn; Koski; Kuchera; Lang; Lardy; Larson, B.; Larson, R.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, G.; Meier, A.; Meiers, R.; Melby; Mertens; Meyer, R.; Moore; Murphy; Mushik; Nicholas; Nowatzki; O'Connell; Olsen, D.; Olson, A.; Opedahl; O'Shea; Peltier; Pomeroy, E.; Pomeroy, G.; Rayl; Retzer; Rice; Richard; Riehl; Riley; Rued; Sanstead; Schindler; Schneider; Schoenwald; Shide; Shockman; Solberg; Strinden; Swiontek; Thompson; Timm; Vander Vorst; Vig; Watne; Wentz; Williams, A.; Williams, C.; Williams, W.; Wold; Speaker Kelly

NAYS: Aubol; Martin, C.

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Kretschmar; Lipsiea; Martinson; Meyer, W.; Nalewaja; Olafson; Peterson; Sinner; Stofferahn; Unhjem; Whalen

SB 2092 passed and the title was agreed to.

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### REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred SB 2173 has had the same under consideration and recommends that the HOUSE RECEDE from its amendments as found on page 1974 of the House Journal.

For the Senate: Sens. Parker, Reiten, Kusler  
 For the House: Reps. Schoenwald, Gerl, Retzer

REP. SCHOENWALD MOVED that the report be adopted, which motion prevailed.

## SECOND READING OF SENATE BILL

SB 2173: A BILL for an Act to amend and reenact sections 65-05-12, 65-05-13, 65-05-17, and 65-05-26 of the North Dakota Century Code, relating to permanent impairment benefits, death benefits, and burial expenses.

Which has been read.

## ROLL CALL

The question being on the final passage of the bill, the roll was called and there were 92 YEAS, 1 NAY, 13 ABSENT AND NOT VOTING.

YEAS: Anderson, C.; Anderson, R.; Aubol; Backes; Black; Boyle; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Gates; Gerl; Goetz; Gorder; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Horgan; Hughes; Jacobson; Keller; Kent; Kloubec; Knudson; Koehn; Koski; Kuchera; Lang; Lardy; Larson, B.; Larson, R.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, C.; Martin, G.; Martinson; Meiers, R.; Melby; Mertens; Meyer, R.; Meyer, W.; Moore; Murphy; Mushik; Nicholas; Nowatzki; O'Connell; Olsen, D.; Olson, A.; Opedahl; O'Shea; Peltier; Pomeroy, E.; Pomeroy, G.; Rayl; Retzer; Rice; Riehl; Riley; Rued; Sanstead; Schindler; Schneider; Schoenwald; Shide; Shockman; Sinner; Solberg; Swiontek; Thompson; Timm; Vander Vorst; Vig; Watne; Wentz; Williams, A.; Williams, C.; Williams, W.; Wold; Speaker Kelly

NAYS: Meier, A.

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Kretschmar; Lipsiea; Nalewaja; Olafson; Peterson; Richard; Stofferahn; Strinden; Unhjem; Whalen

SB 2173 passed and the title was agreed to.

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## MESSAGES FROM THE SENATE SENATE CHAMBER

MADAM SPEAKER: I have the honor to transmit herewith the following on which the Senate has adopted the conference committee report and subsequently passed the same:

SB 2029

Very respectfully,  
LEO LEIDHOLM, Secretary

## SENATE CHAMBER

MADAM SPEAKER: I have the honor to inform you that the Senate has refused to concur in the House amendments to SB 2033 and the President has appointed as a conference committee to act with a like committee from the House on:

SB 2033: Sens. Nelson, Thane, Heigaard

Very respectfully,  
LEO LEIDHOLM, Secretary

## MOTION

REP. BACKES MOVED that the House consider the Conference Committee report on HB 1022 at this time, which motion prevailed.

## REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred Engrossed HB 1022 has had the same under consideration and recommends that the SENATE RECEDE from its amendments as found on page 2209 of the House Journal and that Engrossed HB 1022 be further amended as follows:

On page 1 of the engrossed bill, line 12, delete the numerals "305,939" and insert in lieu thereof the numerals "302,447"

On page 1 of the engrossed bill, line 15, delete the numerals "472,924" and insert in lieu thereof the numerals "469,432"

And renumber the lines accordingly

## STATEMENT OF PURPOSE OF AMENDMENT:

The salaries and wages line item is reduced by \$3,492 from the general fund to reflect no salary increases for the biennium, and will allow funds for the state to provide a two percent contribution to retirement on wages earned after July 1, 1983, and an additional two percent contribution amounting to a full four percent on wages earned after July 1, 1984.

For the Senate: Sens. Naaden, Tweten, Walsh

For the House: Reps. Boyle, Erdman, O. Hanson (refused to sign)

REP. BOYLE MOVED that the report be adopted.

## REQUEST

REP. BACKES REQUESTED a recorded roll call vote on the motion to adopt the Conference Committee report on HB 1022, which request was granted.

## ROLL CALL

The question being on the adoption of the Conference Committee report on HB 1022, the roll was called and there were 75 YEAS, 20 NAYS, 11 ABSENT AND NOT VOTING.

YEAS: Aubol; Backes; Black; Boyle; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Goetz; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Horgan; Jacobson; Keller; Knudson; Koehn; Koski; Kuchera; Lang; Lardy; Larson, B.; Larson, R.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, C.; Martin, G.; Martinson; Meier, A.; Meiers, R.; Mertens; Meyer, R.; Meyer, W.; Mushik; Nicholas; Nowatzki; O'Connell; Olsen, D.; Olson, A.; Opedahl; O'Shea; Pomeroy, E.; Pomeroy, G.; Rayl; Retzer; Richard; Riehl; Sanstead; Schindler; Schneider; Schoenwald; Shockman; Sinner; Solberg; Strinden; Swiontek; Vig; Watne; Wentz; Williams, A.; Williams, C.; Williams, W.; Speaker Kelly

NAYS: Anderson, C.; Anderson, R.; Gates; Gerl; Gorder; Hughes; Kent; Kloubec; Melby; Moore; Murphy; Peltier; Rice; Riley; Rued; Shide; Thompson; Timm; Vander Vorst; Wold

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Kretschmar; Lipsiea; Nalewaja; Olafson; Peterson; Stofferahn; Unhjem; Whalen

So the report of the Conference Committee on HB 1022 was adopted.

## SECOND READING OF HOUSE BILL

HB 1022: A BILL for an Act making an appropriation for defraying the expenses of the livestock sanitary board of the state of North Dakota.

Which has been read.

## ROLL CALL

The question being on the final passage of the bill as amended, the roll was called and there were 73 YEAS, 22 NAYS, 11 ABSENT AND NOT VOTING.

YEAS: Aubol; Backes; Black; Boyle; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Gerl; Goetz; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hoffner, S. F.; Horgan; Jacobson; Keller; Knudson; Koehn; Koski; Kuchera; Lardy; Larson, B.; Larson, R.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, C.; Martin, G.; Martinson; Meier, A.; Meiers, R.; Mertens; Meyer, R.; Meyer, W.; Mushik; Nicholas; Nowatzki; O'Connell; Opedahl; O'Shea; Pomeroy, E.; Pomeroy, G.; Rayl; Retzer; Richard; Riehl; Riley; Sanstead;

Schindler; Schneider; Schoenwald; Shockman; Sinner;  
Solberg; Strinden; Swiontek; Vig; Watne; Wentz;  
Williams, A.; Williams, C.; Williams, W.; Speaker Kelly

NAYS: Anderson, C.; Anderson, R.; Gates; Gorder;  
Hoffner, Serenus; Hughes; Kent; Kloube; Lang; Melby;  
Moore; Murphy; Olsen, D.; Olson, A.; Peltier; Rice;  
Rued; Shide; Thompson; Timm; Vander Vorst; Wold

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury;  
Kretschmar; Lipsiea; Nalewaja; Olafson; Peterson;  
Stofferahn; Unhjem; Whalen

HB 1022 passed and the title was agreed to.

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#### MOTION

REP. BACKES MOVED that HB 1022 be messaged to the Senate immediately, which motion prevailed.

#### MOTION

REP. BACKES MOVED that the House consider the Conference Committee report on SB 2029 at this time, which motion prevailed.

#### REPORT OF CONFERENCE COMMITTEE

MADAM SPEAKER: Your Conference Committee to which was referred SB 2029 has had the same under consideration and recommends that the HOUSE RECEDE from its amendments as found on page 1499 of the House Journal and that SB 2029 be amended as follows:

On page 1, line 14, delete the numerals "425,909" and insert in lieu thereof the numerals "401,373"

On page 1, line 19, delete the numerals "1,152,209" and insert in lieu thereof the numerals "1,127,673"

And renumber the lines accordingly

#### STATEMENT OF PURPOSE OF AMENDMENT:

##### Soil Conservation Committee

The salaries and wages line item is reduced by \$24,536 from the general fund to allow funds for the state to pay one-half (two percent) of the employees' share of retirement effective with wages earned beginning July 1, 1983.

For the Senate: Sens. Nething, Nelson, Redlin

For the House: Reps. Mertens, Mushik, Strinden

## REQUEST

REP. BACKES REQUESTED a recorded roll call vote on the motion to adopt the Conference Committee report on SB 2029, which request was granted.

## ROLL CALL

The question being on the adoption of the Conference Committee report on SB 2029, the roll was called and there were 15 YEAS, 76 NAYS, 15 ABSENT AND NOT VOTING.

YEAS: Anderson, R.; Hughes; Kent; Kloubec; Melby; Moore; Olsen, D.; Olson, A.; Peltier; Retzer; Rice; Riley; Shide; Timm; Vander Vorst

NAYS: Anderson, C.; Aubol; Backes; Black; Boyle; Brokaw; Conmy; DeMers; Dotzenrod; DuBord; Eagles; Erdman; Gates; Gerl; Goetz; Gordier; Gullickson; Halmrast; Hamerlik; Hanson, L.; Haugland; Hausauer; Hill; Hjelle; Hoffner, Serenus; Hoffner, S. F.; Horgan; Jacobson; Keller; Koehn; Koski; Kuchera; Lang; Lardy; Larson, B.; Laughlin; Lautenschlager; Linderman; Lloyd; Martin, C.; Martin, G.; Meier, A.; Meiers, R.; Mertens; Meyer, R.; Meyer, W.; Murphy; Mushik; Nicholas; Nowatzki; O'Connell; Opedahl; O'Shea; Pomeroy, E.; Pomeroy, G.; Rayl; Richard; Riehl; Rued; Sanstead; Schindler; Schneider; Schoenwald; Shockman; Sinner; Solberg; Swiontek; Thompson; Vig; Watne; Wentz; Williams, A.; Williams, C.; Williams, W.; Wold; Speaker Kelly

ABSENT AND NOT VOTING: Gunsch; Hanson, O.; Kingsbury; Knudson; Kretschmar; Larson, R.; Lipsiea; Martinson; Nalewaja; Olafson; Peterson; Stofferahn; Strinden; Unhjem; Whalen

So the motion to adopt the Conference Committee report on SB 2029 failed to pass.

## MOTION

REP. BACKES MOVED that the same conference committee be reappointed to act on SB 2029, which motion prevailed.

SPEAKER KELLY REAPPOINTED Representatives Mertens, Mushik, and Strinden to the Conference Committee to SB 2029.

MESSAGE TO THE SENATE  
HOUSE CHAMBER

MR. PRESIDENT: I have the honor to transmit herewith the following on which the House has adopted the conference committee report and subsequently passed the same:

HB 1022

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## MOTION

REP. BACKES MOVED that the House stand in recess until 3:00 p.m., which motion prevailed.

THE HOUSE RECONVENED pursuant to recess taken, with Speaker Kelly presiding.

MESSAGE FROM THE SENATE  
SENATE CHAMBER

MADAM SPEAKER: I have the honor to inform you that the President has appointed as a conference committee to act with a like committee from the House on:

HB 1007: Sens. Lips, Wenstrom, Stromme

HB 1733: Sens. Thane, Tennefos, Heigaard

Very respectfully,  
LEO LEIDHOLM, Secretary

## MOTION

REP. BACKES MOVED that the House stand in recess until 4:30 p.m., which motion prevailed.

THE HOUSE RECONVENED pursuant to recess taken, with Speaker Kelly presiding.

MESSAGE TO THE SENATE  
HOUSE CHAMBER

MR. PRESIDENT: I have the honor to return herewith the following on which the House has adopted the conference committee report and subsequently passed the same:

SB 2092, SB 2173

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## HOUSE CHAMBER

MR. PRESIDENT: I have the honor to transmit herewith the following on which the House has adopted the conference committee report and subsequently passed the same:

HB 1429, HB 1528

Very respectfully,  
CHARLES FLEMING, Chief Clerk

## MOTIONS

REP. BACKES MOVED that the absent members be excused, which motion prevailed.

REP. BACKES MOVED that the House be on the Fifth order of business, and at the conclusion of the Fifth order, the House be on the Seventh order of business, and at the conclusion of the Seventh order, the House stand adjourned until 8:00 a.m., Monday, April 11, 1983, which motion prevailed.

## REPORTS OF STANDING COMMITTEES

MADAM SPEAKER: Your Committee on Finance and Taxation to which was referred Engrossed SB 2493 has had the same under consideration and recommends by a vote of 14 YEAS, 1 NAY, 2 ABSENT AND NOT VOTING that the same BE AMENDED AS FOLLOWS and when so amended, recommends the same DO PASS:

- On page 1 of the engrossed bill, line 23, delete the word "insurance"
- On page 1 of the engrossed bill, line 27, overstrike the words "equal in amount to two", and overstrike the words "percent of" and insert immediately thereafter the word "on"
- On page 2 of the engrossed bill, line 2, overstrike the word "year"
- On page 2 of the engrossed bill, line 3, after the word "sueh" insert the words "calendar quarter, at the rate of two percent", after the word "insurance" insert the words ", one-half of one percent with respect to accident and sickness insurance,", and delete the words "a tax of"
- On page 2 of the engrossed bill, line 4, delete everything after the word "percent"
- On page 2 of the engrossed bill, delete line 5
- On page 2 of the engrossed bill, line 6, delete the words "and service charges"
- On page 2 of the engrossed bill, line 9, delete the words "March first of each" and insert in lieu thereof the words "the sixtieth day after the last day of the calendar quarter"
- On page 2 of the engrossed bill, line 10, delete the word "year"
- On page 2 of the engrossed bill, line 33, after the word "subsection" insert the words "shall be prorated on a quarterly basis and"
- On page 3 of the engrossed bill, line 22, overstrike the words "equal in"
- On page 3 of the engrossed bill, line 23, overstrike the words "amount to two", and overstrike the words "percent of" and insert immediately thereafter the word "on"

- On page 3 of the engrossed bill, line 26, overstrike the word "year", and after the word "~~sueh~~" insert the words "calendar quarter, at the rate of two percent"
- On page 3 of the engrossed bill, line 27, after the word "insurance" insert the words ", one-half of one percent with respect to accident and sickness insurance,", delete the words "a tax of", and delete the second word "of"
- On page 3 of the engrossed bill, delete line 28 and 29
- On page 3 of the engrossed bill, line 30, delete the words "service charges"
- On page 3 of the engrossed bill, line 33, delete the words "March first of each" and insert in lieu thereof the words "the sixtieth day after the last day of the calendar quarter"
- On page 3 of the engrossed bill, line 34, delete the word "year"
- On page 4 of the engrossed bill, line 28, after the word "subsection" insert the words "shall be prorated on a quarterly basis and"
- On page 5 of the engrossed bill, line 9, overstrike the second word "of", and delete the word "one"
- On page 5 of the engrossed bill, line 10, overstrike the words "percent of" and insert immediately thereafter the words "as provided in section 26-01-11 on"
- On page 6 of the engrossed bill, line 18, overstrike the words "equal in amount to two"
- On page 6 of the engrossed bill, line 19, overstrike the words "percent of" and insert immediately thereafter the word "on"
- On page 6 of the engrossed bill, line 22, overstrike the word "year" and insert immediately thereafter the words "calendar quarter, at the rate of two percent"
- On page 6 of the engrossed bill, line 23, after the word "insurance" insert the words ", one-half of one percent with respect to accident and sickness insurance,", delete the words "a tax of", and delete the words "of the gross amount of"
- On page 6 of the engrossed bill, delete line 24

- On page 6 of the engrossed bill, line 25, delete the words "policy fees, and finance and service charges"
- On page 6 of the engrossed bill, line 29, delete the words "March first of each year" and insert in lieu thereof the words "the sixtieth day after the last day of the calendar quarter"
- On page 7 of the engrossed bill, line 17, after the word "subsection" insert the words "shall be prorated on a quarterly basis and"
- On page 8 of the engrossed bill, line 4, overstrike the words "equal in amount to two"
- On page 8 of the engrossed bill, line 5, overstrike the words "percent of" and insert immediately thereafter the word "on"
- On page 8 of the engrossed bill, line 8, overstrike the word "year" and insert immediately thereafter the words "calendar quarter, at the rate of two percent"
- On page 8 of the engrossed bill, line 9, after the word "insurance" insert the words ", one-half of one percent with respect to accident and sickness insurance,", delete the words "a tax of", and delete the words "of the gross amount of"
- On page 8 of the engrossed bill, delete line 10
- On page 8 of the engrossed bill, line 11, delete the words "policy fees, and finance and service charges"
- On page 8 of the engrossed bill, line 15, delete the words "March first of each year" and insert in lieu thereof the words "the sixtieth day after the last day of the calendar quarter"
- On page 9 of the engrossed bill, line 9, after the word "subsection" insert the words "shall be prorated on a quarterly basis and"
- On page 9 of the engrossed bill, line 26, overstrike the second word "of", and delete the word "one"
- On page 9 of the engrossed bill, line 27, overstrike the words "percent of" and insert immediately thereafter the words "as provided by section 26.1-03-17 on"
- On page 10 of the engrossed bill, line 24, after the numeral "1981" and before the period insert the words ", except for nonprofit health service corporations and health maintenance organizations. With respect

to nonprofit health service corporations and health maintenance organizations, this Act applies to taxable years beginning after December 31, 1982"

And renumber the lines and pages accordingly

REP. SINNER, Chairman

Engrossed SB 2493 was placed on the Sixth order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Committee on Judiciary to which was referred SCR 4061 has had the same under consideration and recommends by a vote of 12 YEAS, 3 NAYS, 1 ABSENT AND NOT VOTING that the same DO NOT PASS.

REP. E. POMEROY, Chairman

SCR 4061 was placed on the Fourteenth order of business on the calendar for the succeeding legislative day.

#### REPORTS OF CONFERENCE COMMITTEES

MADAM SPEAKER: Your Conference Committee to which was referred SB 2219 has had the same under consideration and recommends that the HOUSE RECEDE from its amendments as found on page 1728 of the House Journal.

For the Senate: Sens. Lodoen, Reiten, Matchie

For the House: Reps. O'Connell, Lloyd, Black

SB 2219 was placed on the Seventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Conference Committee to which was referred Engrossed SB 2373 has had the same under consideration and recommends that the HOUSE RECEDE from its amendments as found on pages 1998-2002 of the House Journal and that Engrossed SB 2373 be amended as follows:

On page 1 of the engrossed bill, line 1, after the words "A BILL" delete the remainder of the bill and insert in lieu thereof the following "for an Act to create and enact two new subsections to section 39-01-01, a new subsection to section 39-06-31, a new subsection to section 39-06.1-10, two new sections to chapter 39-08, and three new sections to chapter 39-20 of the North Dakota Century Code, relating to penalty and punishment for operating a motor vehicle while under the influence of intoxicating liquor or controlled substances and to law enforcement procedures; to amend and reenact section 27-20-51, subsection 5 of section 27-20-54, subsection 1 of section 39-06-01, subsection 5 of section 39-06-17, subsection 2 of section 39-06-23, section 39-06-33.1, subsections 1 and 2 of section 39-06-35, sections 39-06-36, 39-06-42, 39-06-43, subsection 1 of section

39-06.1-05, section 39-06.1-07, subdivision b of subsection 3 and subsection 4 of section 39-06.1-10, sections 39-06.1-11, 39-07-07, 39-07-10, 39-07-11, 39-08-01, 39-20-01, 39-20-02, 39-20-04, 39-20-05, 39-20-06, 39-20-07, 39-20-08, 39-20-09, 39-20-14, 40-18-01, 40-18-12, and 40-18-13 of the North Dakota Century Code, relating to reporting juvenile offenses, penalty and punishment for operating a motor vehicle while under the influence or for driving in violation of license suspension, revocation, or restriction, testing for blood alcohol concentration, interpretation of tests, issuing of notification forms to arrested drivers, and law enforcement, judicial, and administrative procedures; and to repeal section 39-06-29.1 of the North Dakota Century Code, relating to the authority to suspend operator's licenses of juveniles.

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

SECTION 1. AMENDMENT. Section 27-20-51 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

27-20-51. Inspection of court files and records. All

1. Except as provided in subsection 2, all files and records of the court in a proceeding under this chapter shall may not be disclosed to the public and are open to inspection only by:

- 1- a. The judge, officers, and professional staff of the court.
- 2- b. The parties to the proceeding and their counsel and representatives.
- 3- c. A public or private agency or institution providing supervision or having custody of the child under order of the court, which shall be given a copy of the findings and order of disposition when it receives custody of the child.
- 4- d. A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had

been a party to the proceeding in juvenile court.

- 5- e. With leave of court any other person or agency or institution having a legitimate interest in the proceeding or in the work of the court.
- 6- f. Upon leave of the court, the principal of any public or private school which is a member of the North Dakota high school activities association, or the superintendent of any school district which has one or more schools involved in the association, but only to the extent necessary to enforce the rules and regulations of the North Dakota high school activities association.

2. In a proceeding under this chapter, if the court finds that a child committed a delinquent or unruly act which constitutes a violation of a law or local ordinance governing the operation of a motor vehicle or a delinquent act of manslaughter or negligent homicide caused by the child's operation of a motor vehicle, the court shall, within ten days, report the finding to the state highway commissioner.

SECTION 2. AMENDMENT. Subsection 5 of section 27-20-54 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 5. Upon entry of an order under subsection 2 or 4, the proceeding shall be treated as if it never occurred. All index references, except those which may be made by the state highway commissioner, shall be deleted, and upon inquiry in any matter the child, the court, law enforcement officers, and representatives of agencies, except the state highway commissioner, shall properly reply that no record exists with respect to the child. Copies of the order shall be sent to each agency or official therein named. Each law enforcement agency and law enforcement officer except the state highway commissioner, upon receipt of a copy of the order, shall destroy all files, records, and references to the child pertaining to his apprehension, detention, and referral to the juvenile court and any

record of disposition made by the juvenile court.

SECTION 3. Two new subsections to section 39-01-01 of the 1981 Supplement to the North Dakota Century Code are hereby created and enacted to read as follows:

"Appropriate licensed addiction treatment program" means an addiction treatment program conducted by an addiction facility licensed by the department of human services.

"Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable person, with due consideration of the totality of circumstances.

SECTION 4. AMENDMENT. Subsection 1 of section 39-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. ~~No~~ A person, ~~except these hereinafter~~ unless expressly exempted in this section, ~~shall~~ may not drive any motor vehicle ~~upon~~ on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless such the person has a valid license as an operator under the provisions of this chapter or a temporary operator's permit issued under chapter 39-20. ~~No~~ A person ~~shall~~ may not receive an operator's license unless and until ~~he~~ that person surrenders to the commissioner all valid operator's licenses in ~~his~~ the person's possession issued to ~~him~~ the person by any other jurisdiction. All surrendered licenses shall be returned by the commissioner to the issuing department together with information that the licensee is now licensed in a new jurisdiction. ~~No~~ A person ~~shall be permitted to~~ may not have more than one valid operator's license at any time.

SECTION 5. AMENDMENT. Subsection 5 of section 39-06-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. It is a class B misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to him that person. If the restricted license was issued under section 39-06.1-11 and the underlying suspension was imposed for a violation of section 39-08-01 or equivalent ordinance, or is governed by chapter 39-20, punishment is as provided in subsection 2 of section 39-06-42 and upon receiving notice of the conviction the commissioner shall revoke, without opportunity for hearing, the licensee's restricted license and shall extend the underlying suspension for a like period of not more than one year. The commissioner may not issue a restricted license for the extended period of suspension imposed under this subsection. If the conviction referred to in this section is reversed by an appellate court, the commissioner shall restore the person to the status held by the person prior to the conviction, including restoration of driving privileges if appropriate.

SECTION 6. AMENDMENT. Subsection 2 of section 39-06-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. "Revocation" means that the driver's operator's license and privilege to drive a motor vehicle on the public highways a highway or on public or private areas to which the public has a right of access for vehicular use in this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented to and acted upon by the commissioner after the expiration of the period of revocation, which period shall not must be less than at least thirty days nor but not more than one year, except as provided in sections 39-06-17, 39-06-31, 39-06-36, and 39-06-43.

SECTION 7. A new subsection to section 39-06-31 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any offense classified as a felony which is a violation of section 22 of this Act. The revocation of the license under this

subsection may be beyond any time of imprisonment or court-ordered inpatient addiction treatment.

SECTION 8. AMENDMENT. Section 39-06-33.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-33.1. Authority to suspend licenses after traffic death or injury - Show cause order required. The Except as provided in section 39-06-31, the commissioner may suspend the license of an operator upon a showing by ~~its~~ the commissioner's records or other sufficient evidence that the licensee has been convicted by a court of competent jurisdiction for violation of the provisions of this title or any other law of this state or municipal ordinance regulating the operation of motor vehicles on highways where it appears from the ~~department~~ commissioner's records that the violation for which ~~he~~ the licensee was convicted contributed in causing an accident resulting in the death or serious personal injury, requiring professional medical care of another, or serious property damage. ~~Prior to~~ Before suspending the license of any person as authorized in this section, the commissioner shall immediately notify the licensee in writing to show cause, within twenty days, why ~~his~~ the licensee should not be suspended ~~or revoked~~. Upon the request of a licensee the commissioner shall afford ~~him~~ the licensee an opportunity for a hearing as early as practical within ~~not to exceed~~ twenty days after receipt of such the request ~~in the county wherein the licensee resides unless the department and licensee agree that such hearing may be held in some other county at a time and place designated by the commissioner.~~ Upon such hearing the commissioner or ~~his~~ duly authorized agent hearing officer may administer oaths ~~and~~, may issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and may require a reexamination of the licensee. Upon such hearing the commissioner may, for good cause, ~~either suspend or revoke~~ the license of such person the licensee.

SECTION 9. AMENDMENT. Subsections 1 and 2 of section 39-06-35 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The commissioner ~~shall~~ may not suspend a driver's an operator's license or privilege to drive a motor vehicle ~~on the public highways~~ for a period of more than one year, except as permitted or required under

this section, section 39-06-17, section 39-06-43, or section 16 of this Act.

2. At When the end of the period of suspension a license surrendered to the department under section 39-06-37 shall be returned to the licensee imposed under this title ceases, the operator's license or driving privilege that has been suspended may not be returned or reinstated, and remains under suspension, until the operator pays to the commissioner a reinstatement fee of twenty-five dollars. Upon payment of the reinstatement fee the license must be returned to the operator. A reinstatement fee is not required for a license to be returned to the operator if the return of the license is due to the findings of a hearing, reexamination of hearing, or court or judicial review under chapter 39-06, 39-06.1, or 39-20.

SECTION 10. AMENDMENT. Section 39-06-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-36. Restoration of revoked licenses. Any person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the revocation period such person may make application for a new license as provided by law, but the commissioner shall not then issue a new license unless and until he is satisfied after investigation of the individual's driving records, driving habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. A person whose license or privilege to drive a motor vehicle has been revoked must pay to the commissioner a revocation reinstatement fee of twenty-five dollars, in addition to any license renewal fee, for issuance of a new license. Until the reinstatement fee is paid the license and privilege to drive a motor vehicle remain under revocation. A reinstatement fee is not required if a revoked license is reinstated due to the findings of a hearing, reexamination of hearing, or court or judicial review as provided under chapter 39-06, 39-06.1 or 39-20.

SECTION 11. AMENDMENT. Section 39-06-42 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-42. Penalty for driving while license suspended or revoked - Impoundment of vehicle number plates - Authority of cities.

1. Except as provided in chapters 39-16 and 39-16.1, and ~~in~~ section 39-06.1-11, any person who drives a motor vehicle on ~~any public~~ a highway ~~of this state at a time when his~~ or on public or private areas to which the public has a right of access for vehicular use in this state while that person's license or privilege so to do is suspended or revoked ~~shall be~~ is guilty of a class B misdemeanor.
2. If the suspension or revocation was imposed for violation of section 39-08-01 or equivalent ordinance or was governed by section 39-06-31 or chapter 39-20, the sentence must be at least fifteen days' imprisonment and such fine as the court deems proper. The sentence and the imposition of sentence may not be suspended under chapter 12-53. Forfeiture of bail is not permitted in lieu of the defendant's personal appearance in open court for arraignment on a charge under this subsection.
3. In addition to any other punishment imposed, the court may 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, ~~as the case may be, of the offender's driving license or privilege. 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 registrar of motor vehicles.

- ~~2-~~ 4. A city may, by ordinance, authorize its municipal judge to order impoundment of motor vehicle number plates in the manner provided in subsection ~~1 of this section~~ 3.

SECTION 12. AMENDMENT. Section 39-06-43 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06-43. Extension of license suspension or revocation. The commissioner upon receiving a record of the conviction of any person upon a charge of driving a vehicle while the license or driving privileges of the person was suspended shall extend the period of that suspension for an additional like period and if the original suspension was for an indefinite or unstated period of time, the additional suspension shall be for a period of six months on and after the date the person would otherwise have been entitled to the return of license or privileges. If, however, the original suspension of driving privileges resulted solely from failure to appear in court or to post and forfeit bond on noncriminal traffic violations, there shall be no additional period of suspension. If the conviction was upon a charge of driving while a license or driving privileges was revoked, the commissioner shall not issue a new license for an additional period of one year from and after the date the person would otherwise have been entitled to apply for a new license. Upon a conviction of a person for violating a restricted license issued under section 39-06.1-11 and in which the underlying suspension was imposed for violating section 39-08-01 or equivalent ordinance or is governed by chapter 39-20, the commissioner shall extend the period of the underlying suspension in accordance with subsection 5 of section 39-06-17.

SECTION 13. AMENDMENT. Subsection 1 of section 39-06.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Driving or being in actual physical control of a vehicle while under the influence of a controlled substance or intoxicating liquor in violation of section 39-08-01, or an equivalent ordinance.

SECTION 14. AMENDMENT. Section 39-06.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-06.1-07. Notification to offenders - Duties of licensing authority. The licensing authority shall prepare a notification ~~form~~ forms and a temporary operator's permit as provided in section 33 or 34 of this Act to be ~~appended to the form of~~ delivered to persons charged along with the uniform traffic summons and complaint as provided in section 29-05-31. The notification ~~form~~ forms shall contain language, approved by the attorney general, informing persons charged with traffic violations, other than offenses listed in section 39-06.1-05, of the procedures available to them under sections 39-06.1-02 and 39-06.1-03 and informing persons who refuse a chemical test or onsite screening test under chapter 39-20 or who, on taking a chemical test, are found to be in violation of subdivision e of subsection 1 of section 39-08-01, of the procedures available under chapter 39-20. The notification shall also contain a schedule of points to be charged against a person's driving record or other operator's license penalties as provided by law, and a schedule of statutory fees and bond amounts as determined in accordance with sections 39-06.1-06 and 39-06.1-02.

SECTION 15. AMENDMENT. Subdivision b of subsection 3 and subsection 4 of section 39-06.1-10 of the 1981 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- |   |                  |
|---|------------------|
| b. Criminal Violations  |                  |
| Conviction of:  | Points Assigned: |
| (1) Reckless driving, in violation of section 39-08-03, or equivalent ordinance   | 8 points         |
| (2) Aggravated reckless driving, in violation of section 39-08-03, or equivalent ordinance  | 12 points        |
| (3) Leaving the scene of an accident involving property damage in violation of sections 39-08-05, 39-08-07, or 39-08-08, or equivalent ordinances | 14 points        |
| (4) Leaving the scene of an accident involving personal injury or death in violation of section 39-08-04, or equivalent                           | 18 points        |

ordinance

- (5) Driving while under the influence or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has not within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 15 24 points
- (6) Being in actual physical control of a motor vehicle while under the influence in violation of section 39-08-01, or equivalent ordinance 6 points
- Driving or being in actual physical control of a motor vehicle in violation of section 39-08-01, or equivalent ordinance, if the driving record shows that the licensee has within the five years preceding the violation previously violated section 39-08-01, or equivalent ordinance 63 points
- (7) Violating restrictions in a restricted license issued pursuant to under section 39-06-17 and relating to the use of eyeglasses or contact lenses while driving 3 points
- (8) Violating any restrictions other than those listed in paragraph 7 of this subdivision, contained in a restricted license issued pursuant to under section 39-06-17 or section 39-06.1-11 4 points
4. If judicial disposition of a traffic violation includes an order or

recommendation of suspension or revocation of an operator's license, ~~such the~~ suspension or revocation shall ~~run runs~~ concurrently with any suspension ordered ~~pursuant to~~ under this section. After a conviction of a person for violating section 39-08-01, the commissioner shall, in suspending the person's operator's license, give credit for the time in which license suspension or revocation has been or is being imposed under chapter 39-20 in connection with the same offense.

SECTION 16. A new subsection to section 39-06.1-10 of the 1981 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

- a. If the commissioner is informed by a court that under section 39-08-01 or 40-18-12 a person convicted of violating section 39-08-01 or equivalent ordinance has been referred for addiction evaluation to an appropriate licensed addiction treatment program and has been subsequently evaluated as needing addiction treatment, the commissioner shall, within three days of being so informed, send notice to the offender informing the offender of the addiction evaluation and of the provisions of this subsection.
- b. If the offender does not, within thirty days from the date the commissioner mailed the notice, enroll in an appropriate licensed addiction treatment program, with that enrollment verified by the program's addiction counselor or instructor, or, if enrolled, the offender does not complete the treatment program, the commissioner shall, subject to the offender's opportunity for hearing under subsection 1, suspend that person's driving privileges in accordance with subdivisions c and d.
- c. If the driving record shows that:

<ol style="list-style-type: none"> <li>(1) <u>Within the five years preceding the most recent</u></li> </ol>	<u>The suspension must be at least:</u>  <u>180 days</u>
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violation of  
section 39-08-01, or  
equivalent ordinance,  
the offender has not previously  
violated section 39-08-01  
or equivalent ordinance

(2) Within the five years 1 year  
preceding the most recent  
violation of

section 39-08-01, or  
equivalent ordinance,  
the offender has once  
previously violated  
section 39-08-01  
or equivalent ordinance

(3) Within the five years 2 years  
preceding the most  
recent violation of

section 39-08-01, or  
equivalent ordinance,  
the offender has twice  
previously violated  
section 39-08-01  
or equivalent ordinance

d. If within the seven years preceding the most  
recent violation of section 39-08-01, or  
equivalent ordinance, the offender has  
previously violated section 39-08-01 or  
equivalent ordinance at least three times,  
the commissioner may restore driving  
privileges to the offender only after that  
person has completed addiction treatment  
through an appropriate licensed addiction  
treatment program and has had no alcohol or  
drug-related offense for two consecutive  
years after completion of treatment.

e. A period of license suspension imposed on an  
offender under this subsection is in addition  
and consecutive to any period of license  
suspension or revocation imposed under  
section 39-06-31 or chapter 39-20 or after a  
conviction of violating section 39-08-01 or  
equivalent ordinance.

SECTION 17. AMENDMENT. Section 39-06.1-11 of  
 the 1981 Supplement to the North Dakota Century Code  
 is hereby amended and reenacted to read as follows:

39-06.1-11. Temporary restricted license. When

1. Except as provided under subsection 2, if the licensing authority has suspended a license, pursuant to under section 39-06.1-10, or when the commissioner has revoked a license pursuant to section 39-26-04, or when or if the commissioner has extended a suspension or revocation pursuant to under section 39-06-43, for a period in excess of for more than seven days, the authority may, for good cause, upon receiving written application from the licensee offender affected, issue a temporary restricted operator's license valid after seven days of the suspension period have passed, for the remainder of the suspension period. The
2. If the licensing authority has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, the authority may, in accordance with this section, for good cause, and upon written application of the offender, issue a temporary restricted license which takes effect after thirty days of the suspension have been served after a first offense under section 39-08-01 or chapter 39-20. The licensing authority may not issue a temporary restricted license to any offender whose operator's license is under suspension upon a second or subsequent offense within the time limitations under section 39-08-01. The licensing authority may not issue a temporary restricted license for a period of license revocation or suspension imposed under section 39-06-31, section 16, or 26 of this Act or subsection 5 of section 39-06-17.
3. A restricted license issued under this section may authorize the use of a motor vehicle only during the licensee's normal working hours, or may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section shall be is deemed a violation of section 39-06-17.

SECTION 18. AMENDMENT. Section 39-07-07 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-07. Halting person for violating traffic regulations - Duty of officer halting. Whenever any person

is halted for the violation of any of the provisions of chapters 39-01 through 39-13, 39-18, 39-21, and 39-24, or of equivalent city ordinances, the officer halting ~~such~~ that person, except as otherwise provided in section 39-07-09 and section 33 or 34 of this Act, may:

1. Take the name and address of ~~such~~ the person;
2. Take the license number of ~~his~~ the person's motor vehicle; and
3. Issue a summons or otherwise notify ~~him~~ that person in writing to appear at a time and place to be specified in ~~such~~ the summons or notice.

A halting officer employed by any political subdivision of the state may not take a person into custody or require that person to proceed with the officer to any other location for the purpose of posting bond, where the traffic violation was a noncriminal offense under section 39-06.1-02. The officer shall provide the person with an envelope for use by that person to mail in mailing the bond.

SECTION 19. AMENDMENT. Section 39-07-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-10. Officer violating provisions for arrest and notice of hearing to defendant may be removed from office. Any officer violating any of the provisions of ~~sections~~ section 39-07-07, 39-07-08, and 39-07-09, or section 33 or 34 of this Act is guilty of misconduct in office and ~~shall be is~~ subject to removal from office.

SECTION 20. AMENDMENT. Section 39-07-11 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-07-11. Magistrate to keep record of convictions of traffic violations - Records of conviction to be forwarded to licensing authority. Every magistrate in this state, as defined in section 29-01-14, shall keep a full record of every case brought before ~~him~~ the magistrate in which a person is charged with a violation of section 12.1-16-02 or 12.1-16-03, or of any provision of chapters 39-05 through 39-13, and chapters 39-21 and 39-24, or with a violation of a municipal ordinance which is equivalent to any of the provisions of the foregoing statutes. Within ten days after a final

order or judgment of conviction, for a violation not subject to disposition and reporting ~~pursuant to~~ under chapter 39-06.1, by the North Dakota supreme court or any lower court having jurisdiction, provided that no appeal is pending and the time for filing a notice of appeal has elapsed, the magistrate then having jurisdiction shall forward a report of that fact to the licensing authority. Any conviction for which a report is received by the licensing authority may be deemed by the licensing authority to be final, and the licensing authority may take any action authorized by law to be taken based ~~upon~~ on the report. Subject to the filing of an appeal, a conviction ~~shall include~~ includes those instances when:

1. A sentence is imposed and suspended;
2. Imposition of a sentence is suspended under chapter 12-53; or
3. There is a forfeiture of bail or collateral deposited to secure a defendant's appearance in court and the forfeiture has not been vacated.

SECTION 21. AMENDMENT. Section 39-08-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. ~~No~~ A person ~~shall~~ 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. ~~He is an habitual user of narcotic drugs or is under the influence of a narcotic drug;~~ That person has a blood 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.
  - b. ~~He~~ That person is under the influence of intoxicating liquor;.

- c. He is under the influence of any controlled substance to a degree which renders him incapable of safely driving; or That person is an habitual user of narcotic drugs or is under the influence of a narcotic drug.
  - d. He is under the influence of a combination of intoxicating liquor and a controlled substance to a degree rendering him incapable of safely driving. That person is under the influence of any controlled substance to a degree which renders that person incapable of safely driving.
  - e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.
2. A person may not 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 a blood 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 being in physical control of a vehicle.
  - b. That person is under the influence of intoxicating liquor.
  - c. That person is an habitual user of narcotic drugs or is under the influence of a narcotic drug.
  - d. That person is under the influence of any controlled substance to a degree which renders that person incapable of safely driving.
  - e. That person is under the influence of a combination of intoxicating liquor and a controlled substance to a degree which renders that person incapable of safely driving.

3. A person violating any provision of this section or equivalent ordinance is guilty of a class B misdemeanor for the first or second conviction in a twenty-four-month five-year period, and of a class A misdemeanor for the second a later conviction in a twenty-four-month five-year period. Notwithstanding the other provisions of this subsection, a person violating this section or equivalent ordinance is guilty of a class A misdemeanor for the fourth or subsequent conviction in a seven-year period. The minimum penalty for such violation shall be either three days in jail or a fine of one hundred dollars, or both such fine and imprisonment. In the event the complaint does not include the allegation that, if convicted, such conviction would be the second or subsequent violation within the time limit as provided in this section, the violating this section is as provided in subsection 5. The court may shall take judicial notice of such the fact that a conviction would be a subsequent conviction if indicated by the records of the state highway department commissioner or may make such finding based on other evidence.
- 3- Revealed by S-L- 1975- ch- 166- & 673-
4. 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 by the sheriff or the chief law enforcement officer of the city, as is appropriate, for the duration of the period of suspension of the offender's driver's license or driving privilege by the licensing authority. The impounded motor vehicle number plates may be released, upon the order of the court, to a bona fide purchaser of the offender's motor vehicle, if that purchaser produces a new certificate of title issued by the registrar of motor vehicles.
5. The court may, upon a conviction of a person under this section, but prior to sentencing, refer the person to an addiction facility licensed by the North Dakota state department of health for diagnosis. Upon receipt of the results of this diagnosis, the court may impose a

sentence as prescribed in this section or it may sentence the person to treatment in a facility approved by the North Dakota department of human services. A person convicted of violating this section, or an equivalent ordinance, must be sentenced in accordance with this subsection.

- a. For a first offense, the sentence must include both a fine of at least two hundred fifty dollars and referral for addiction evaluation to an appropriate licensed addiction treatment program. If the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.
- b. For a second offense within five years, the sentence must include at least four days' imprisonment of which forty-eight hours must be served consecutively, or ten days' community service; a fine of at least five hundred dollars; and referral for addiction evaluation to an appropriate licensed addiction treatment program. If the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.
- c. For a third offense within five years, the sentence must include at least sixty days' imprisonment, of which forty-eight hours must be served consecutively; a fine of one thousand dollars, and referral for addiction evaluation to an appropriate licensed addiction treatment program. If the addiction evaluation indicates treatment is needed, the court shall notify the commissioner.
- d. For a fourth offense within seven years, the sentence must include one hundred eighty days' imprisonment, of which forty-eight hours must be served consecutively and a fine of one thousand dollars.
- e. A sentence or imposition of sentence under this section may not be suspended under chapter 12-53 except that a fine or a sentence of imprisonment may be

suspended in any of the following instances:

- (1) Upon conviction of being in actual physical control of a motor vehicle in violation of this section or equivalent ordinance.
- (2) If the defendant is under age eighteen when convicted except that if the defendant has, within the preceeding five years, previously been convicted of violating section 39-08-01 or equivalent ordinance, the sentence must include at least forty-eight consecutive hours imprisonment or in a minimum security facility or at least ten days of community service, which sentence or imposition of sentence may not be suspended under chapter 12-53.

f. For purposes of this section, conviction of an offense under a law or ordinance of another state which is equivalent to this section shall 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 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 inpatient treatment at an appropriate licensed addiction treatment program and the time spent by the defendant in the inpatient treatment must be credited as a portion of a sentence of imprisonment under this section.

SECTION 22. A new section to chapter 39-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

1. If a person is charged with violation of section 39-08-01 and violation of section 12.1-16-02, 12.1-16-03, or 39-08-03 arising from the same occurrence, the court shall consolidate the charges for trial. The penalty provided in this section applies when the court finds the person guilty of violation of section 39-08-01 and section 12.1-16-02 or 12.1-16-03, or a violation of sections 39-08-01 and 39-08-03 if the court finds that the violation caused serious bodily injury, as defined in section 12.1-01-04, to another person.
2. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 and section 12.1-16-02 or 12.1-16-03, the sentence under section 12.1-16-02 or 12.1-16-03 must be at least one year's imprisonment. If the defendant was at least eighteen years of age at the time of the violation of section 39-08-01 and section 39-08-03, the sentence under section 39-08-03 must be at least ninety days' imprisonment. The sentence for violation of section 12.1-16-02, 12.1-16-03, or 39-08-03 may not be suspended unless the court finds that manifest injustice would result from imposition of the sentence. The sentence must be served in its entirety, without benefit of parole or pardon. The sentence for violation of section 12.1-16-02, 12.1-16-03, or 39-08-03 under this section must be consecutive to any sentence imposed for violating section 39-08-01 or equivalent ordinance.
3. If the defendant was less than eighteen years of age at the time of the offense, the punishment may be in accordance with subsection 2 or chapter 27-20.

SECTION 23. A new section to chapter 39-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

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.

SECTION 24. AMENDMENT. Section 39-20-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-01. Implied consent to determine alcoholic content of blood. Any person who operates a motor vehicle ~~upon the public highways of~~ on a highway or on public or private areas to which the public has a right of access for vehicular use in this state ~~shall be~~ is deemed to have given consent, and shall consent, subject to the provisions of this chapter, to a chemical test, or tests, of ~~his the~~ blood, breath, saliva, or urine for the purpose of determining the alcoholic content of ~~his the~~ blood. The test or tests ~~shall~~ must be administered at the direction of a law enforcement officer only after placing ~~such the~~ the person, except persons mentioned in section 39-20-03, under arrest and informing ~~him that person that he~~ the person is or will be charged with the offense of driving or being in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor. The arresting officer shall also inform the person charged that refusal of the person to submit to the test determined appropriate will result in a revocation for one year of the person's driving privileges. The arresting officer shall determine which of the ~~aforesaid tests shall is to~~ be used.

SECTION 25. AMENDMENT. Section 39-20-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-02. Persons qualified to administer test and opportunity for additional test. Only a physician, or a qualified technician, chemist, or registered nurse acting at the request of a law enforcement officer may withdraw blood for purpose of determining the alcoholic content therein. This limitation ~~shall~~ does not apply to the taking of breath, saliva, or urine specimen. The person tested may have a physician, or a qualified technician, chemist, registered nurse, or other qualified person of his own choosing administer a chemical test or tests in addition to any administered at the direction of a law enforcement officer with all costs of an additional test or tests to be the sole responsibility of the person charged. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests taken at the direction of law enforcement officer. Upon the request of the person who is tested, full information concerning the test or tests taken at the

direction of the law enforcement officer shall be made available to him.

SECTION 26. AMENDMENT. Section 39-20-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-04. Revocation of privilege to drive motor vehicle upon refusal to submit to chemical testing. If a person ~~under arrest~~ refuses to submit to ~~chemical~~ testing under section 39-20-01 or 39-20-14, none shall be given, but the commissioner, upon the receipt of that person's operator's license, if taken under section 33 or 34 of this Act, and a sworn report of the law enforcement officer, forwarded by the ~~arresting~~ officer within five days after the refusal, showing that ~~he~~ the officer had reasonable grounds to believe the ~~arrested~~ person had been driving or was in actual physical control of a motor vehicle ~~upon the public highways while under the influence of intoxicating liquor~~ in violation of section 39-08-01 or equivalent ordinance, 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 ~~his~~ that person's license or permit to drive and any nonresident operating privilege for a period of ~~six months, or, if one year,~~ or if the person is a resident without a license or a permit to operate a motor vehicle in this state, the commissioner shall deny to the person the issuance of a license or permit for a period of ~~six months~~ one year after the date of the alleged violation, subject to the opportunity for a prerevocation hearing and postrevocation review as ~~hereinafter~~ provided in this chapter. In the revocation of the person's operator's license the commissioner 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 commissioner may not give credit for time in which the person retained driving privileges through a temporary driver's permit issued under sections 33 and 34 of this Act.

SECTION 27. AMENDMENT. Section 39-20-05 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-05. Administrative hearing on request. ~~Prior to~~

1. Before issuing an order of suspension, revocation, or denial under section 39-20-04 or section 35 of this Act, the

commissioner shall give such the person a written notice of intention to revoke, suspend, or deny and afford him that person an opportunity for a hearing. if the commissioner receives a written request within ten days, he shall hold such hearing if the person mails a request for the hearing to the commissioner within five days after the issuance of the temporary operator's permit. The hearing must be held within sixty twenty days. The after the date of issuance of the temporary operator's permit.

2. If the issue to be determined by the hearing concerns license suspension for operating a motor vehicle while having a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing must be before a hearing officer assigned by the commissioner and at a time and place designated by the commissioner. The hearing must be recorded and its scope may cover only the issues of whether the arresting officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle in violation of 39-08-01 or equivalent ordinance; whether the person was placed under arrest; whether the person was tested in accordance with section 39-20-01 or 39-20-03 and, if applicable, section 39-20-02; and whether, based on a review of the test procedures and results, the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight. Whether the person was informed that the privilege to drive might be suspended based on the results of the test is not an issue.

3. If the issue to be determined by the hearing concerns license revocation for refusing to submit to a test under section 39-20-01 or 39-20-14, the hearing shall must be before the commissioner or his authorized agent in the county wherein the alleged events occurred for which the person was arrested, unless the commissioner or his authorized agent and the person agree that the hearing may be held in some other county a hearing officer assigned by the commissioner at a time and place designat. by the commissioner. The

hearing shall must be transcribed recorded and its scope shall may cover only the issues of whether a law enforcement officer had reasonable grounds to believe the person had been driving or was in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor in violation of section 39-08-01 or equivalent ordinance; whether the person was placed under arrest if applicable; and, whether he that person refused to submit to the test or tests. Whether the person was informed that his the privilege to drive would be revoked or denied if he refused for refusal to submit to the test or tests shall is not be an issue.

4. At the a hearing under this section, the regularly kept records of the commissioner may be introduced and shall. Those records establish prima facie the their contents thereof without further foundation. The commissioner or his authorized agent shall promptly make findings of fact, conclusions, and decision as provided for in section 28-32-13. At the close of the hearing, the hearing officer shall notify the person of the hearing officer's findings of fact, conclusions of law, and decision based on the findings and conclusions and shall immediately deliver to the person a copy of the decision. If the hearing officer finds, based on a preponderance of the evidence, that the person refused a test under section 39-20-01 or 39-20-14 or that the person was operating a motor vehicle with a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the hearing officer shall immediately take possession of the person's temporary operator's permit issued under section 33 or 34 of this Act. If the hearing officer does not find against the person, the hearing officer shall sign, date, and mark on the person's permit an extension of driving privileges for the next twenty days and shall return the permit to the person. The hearing officer shall report the findings, conclusions, and decisions to the commissioner within ten days of the conclusion of the hearing. Within two days from the date in which the commissioner

receives the report, the commissioner shall mail a notice of the decision to the person who requested the hearing and, if the decision of the hearing officer is to not suspend or not revoke the person's operator's license, shall return the license to the person. If the hearing officer has determined in favor of the person, the commissioner shall return the person's operator's license. Notice of the decision and resulting order of the commissioner shall be is sufficient if mailed by regular mail to the address on file with the commissioner pursuant to under section 39-06-20.

5. If the person who requested a hearing under this section fails to appear at the hearing without justification, the right to the hearing is waived, and the commissioner's determination on license revocation, suspension, or denial will be based on the written request for hearing, law enforcement officer's report, and other evidence as may be available.

SECTION 28. AMENDMENT. Section 39-20-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-06. Judicial review. Any person aggrieved by the decision of the commissioner or his authorized agent a hearing officer under section 39-20-05 may, within thirty seven days after the commissioner mailed the notice of the decision, section 28-32-15 notwithstanding, serve on the commissioner and file a notice of appeal and specifications of error in the district court in the county wherein where the alleged events occurred for which he was arrested the demand for a test was made, or in the county in which the administrative hearing was held. It shall be the duty of the The court to shall set the matter for hearing, and the petitioner shall give twenty days' notice thereof of the hearing to the commissioner and to the hearing officer who rendered the decision. The commissioner shall or the court may not thereupon stay his the decision until the hearing date but in no event for more than sixty days. Within fifteen days after receipt of the notice, the commissioner or the hearing officer who rendered the decision shall file in the office of the clerk of court to which the appeal is taken a certified transcript of the testimony and all other proceedings. It shall constitute is the record on which appeal shall be

determined. No additional evidence ~~shall~~ may be heard. The court shall affirm the decision of the commissioner or ~~his authorized agent hearing officer~~ unless it finds the evidence insufficient to warrant the conclusion reached by the commissioner or ~~hearing officer~~. The court may ~~in its discretion~~ direct that the matter be returned to the commissioner or ~~hearing officer~~ for rehearing and the presentation of additional evidence.

SECTION 29. AMENDMENT. Section 39-20-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-07. Interpretation of chemical tests. Upon the trial of any civil or criminal action or proceeding arising out of acts alleged to have been committed by any person while driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor, evidence of the amount of alcohol in the person's blood at the time of the act alleged as shown by a chemical analysis of ~~his~~ the blood, breath, saliva, or urine is admissible. For the purpose of this section:

1. A person having, at that time, ~~five-hundredths~~ a blood alcohol concentration of ~~not more than five one-hundredths~~ of one percent or less by weight of ~~alcohol in his blood~~ is presumed not to be under the influence of intoxicating liquor.
2. Evidence that there was at that time more than ~~five-hundredths~~ five one-hundredths of one percent and less than ~~ten-hundredths~~ of one percent by weight of alcohol in the person's blood is relevant evidence, but it is not to be given prima facie effect in indicating whether the person was under the influence of intoxicating liquor.
3. A person having, at that time, ~~ten-hundredths~~ a blood alcohol concentration of ~~at least ten one-hundredths~~ of one percent or more by weight of ~~alcohol in his blood~~ shall be presumed to be at the time of the performance of a chemical test within two hours after driving or being in physical control of a vehicle is under the influence of intoxicating liquor at the time of driving or being in physical control of a vehicle.

4. Percent by weight of alcohol in the blood ~~shall be~~ or blood alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of alveolar breath.
5. The results of ~~such~~ the chemical analysis ~~shall~~ must be received in evidence when it is shown that the sample was properly obtained and the test was fairly administered, ~~provided that a and if the test of a person's blood, urine, breath, or other bodily substance and the result thereof is further shown to have been performed according to methods or and with devices approved by the state toxicologist, or both, and by an individual possessing a certificate of qualification to administer the test issued by the state toxicologist. The state toxicologist is authorized to approve satisfactory techniques, devices, and methods of chemical analysis and to determine the qualifications of individuals to conduct such analysis, and shall issue a certificate to all qualified operators who shall exhibit the certificate upon demand by of the person requested to take the chemical test. The state toxicologist may appoint, train, certify, and supervise field inspectors of breath testing equipment and its operation, and the inspectors shall report the findings of any inspection to the state toxicologist for appropriate action. Upon approval of the methods or devices, or both, and techniques required to perform such the tests and the persons qualified to administer them, the state toxicologist shall prepare and file written record of such the approval with the clerk of the district court in each county within the state which and shall include in the record:~~
  - a. A quarterly register of the specific testing devices currently approved, including serial number, location, and the date and results of last inspection.
  - b. A quarterly register of currently qualified and certified operators of said the devices, stating the date of certification and its expiration.

- c. The operational check list and forms prescribing the methods and techniques currently approved by the state toxicologist in using ~~such~~ the devices during the administration of the tests.

Copies of ~~the above~~ these records certified by the clerk of the district court ~~shall~~ must be admitted as prima facie evidence of the matters stated ~~therein~~ in the records.

6. A certified copy of the analytical report of a blood analysis signed by the state toxicologist ~~shall~~ must be accepted as prima facie evidence of the results of ~~such~~ a chemical analysis performed ~~herein~~ under this chapter.
7. Notwithstanding any statute or rule to the contrary, the defendant may subpoena the state toxicologist or any employee ~~thereof~~ of the state toxicologist to testify at the trial of the issue ~~at no~~ without cost to the defendant.
8. A signed statement from the nurse or medical technician drawing the blood sample for testing as set forth in subsection 5 is prima facie evidence that the blood sample was properly drawn and no further foundation for the admission of such evidence may be required.

SECTION 30. AMENDMENT. Section 39-20-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-08. Proof of refusal admissible in any civil or criminal action or proceeding. If the person under arrest refuses to submit to the test or tests, proof of refusal ~~shall be is~~ is admissible in any civil or criminal action or proceeding arising out of acts alleged to have been committed while the person was driving or in actual physical control of a vehicle upon the public highways while under the influence of intoxicating liquor; ~~provided the person shall first have testified in the action.~~

SECTION 31. AMENDMENT. Section 39-20-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-09. Effect of evidence of chemical test. The provisions of this chapter do not limit the

introduction of any other competent evidence bearing on the question of whether the person was under the influence of intoxicating liquor but, if the test results show a blood alcohol concentration of at least ten one-hundredths of one percent, the purpose of such evidence shall be limited to the issues of probable cause, whether an arrest was made prior to the administering of the test, and the validity of the test results.

SECTION 32. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state ~~shall be~~ is deemed to have given consent to submit to an onsite screening test or tests of ~~his~~ the person's breath for the purpose of estimating the alcohol content of ~~his~~ the person's blood upon the request of a law enforcement officer who has reason to believe that ~~such~~ the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through ~~his~~ the officer's observations, formulated an opinion that ~~such~~ the person's body contains alcohol. A person ~~shall~~ may not be required to submit to a screening test or tests of ~~his~~ breath while at a hospital as a patient if the medical practitioner in immediate charge of ~~his~~ the person's case is not first notified of the proposal to make the requirement, or objects to the test or tests on the ground that such would be prejudicial to the proper care or treatment of the patient. The screening test or tests shall be performed by an enforcement officer certified as a chemical test operator by the state toxicologist and according to methods and with devices approved by the state toxicologist. The results of such screening test shall be used only for determining whether or not a further test shall be given under the provisions of section 39-20-01. The officer shall inform the person that refusal of the person to submit to a screening test will result in a revocation for one year of that person's driving privileges. If such person refuses to submit to such screening test or tests, none shall be given, but such refusal shall be sufficient cause to revoke such person's license or permit to drive in the same manner as provided in section 39-20-04, and a hearing as provided in section 39-20-05 and a judicial review as provided in section 39-20-06 shall be available. No provisions of this section shall supersede any provisions of chapter 39-20, nor shall any provision

of chapter 39-20 be construed to supersede this section except as provided herein.

**SECTION 33.** A new section to chapter 39-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Action following test result or on refusing test for a resident operator. If a person refused to submit to a test as provided under section 39-20-01 or 39-20-14, or if a person submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test shows that person to have a blood 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, the following procedures apply:

1. The law enforcement officer shall immediately take possession of the person's operator's license and shall immediately issue to that person a temporary operator's permit extending driving privileges for the next twenty days. The law enforcement officer shall sign and note the date on the temporary operator's permit. The temporary operator's permit serves as the department's official notification to the person of the department's intent to revoke, suspend, or deny driving privileges in this state.
2. If a test administered under section 39-20-01 or 39-20-03 was by drawing blood as provided in section 39-20-02 and the person tested is not a resident of an area in which the law enforcement officer has jurisdiction, the law enforcement officer shall, on receiving the analysis of the blood from the state toxicologist and if the analysis shows that person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, notify the sheriff in the county of this state where the person lives. On that notification, that sheriff shall immediately take possession of the person's North Dakota operator's license and, within twenty-four hours, relay the license to the arresting officer. The sheriff shall also, on taking possession of the person's operator's license, issue to that person a temporary operator's permit as provided in this section, and shall sign and date the

permit as provided in subsection 1. The temporary operator's permit serves as the department's official notification to the person of the department's intent to revoke, suspend, or deny driving privileges in this state.

3. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the commissioner a sworn report and the person's operator's license taken under subsection 1 or 2. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test or tests under section 39-20-01 or section 39-20-14, the sworn report shall include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the sworn report must show 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, that the person was lawfully arrested, that the person was tested in accordance with section 39-20-01, 39-20-02, or 39-20-03, and that the test results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight.

**SECTION 34.** A new section to chapter 39-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Action following test result or on refusing test by a nonresident operator. If a person licensed in another state refuses in this state to submit to a test provided under section 39-20-01 or 39-20-14, or who submits to a test under section 39-20-01, 39-20-02, or 39-20-03 and the test results show the person to have a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the following procedures apply:

1. Without taking possession of the person's out-of-state operator's license, the law enforcement officer shall issue to the person a temporary operator's permit extending nonresident operating privileges in this state for twenty days from the date

of issuance. The temporary permit shall be signed and dated by the officer and serves as the department's official notification to the person of the department's intent to revoke, suspend, or deny driving privileges in this state.

2. If the test was administered by drawing blood, the law enforcement officer, on reviewing the blood alcohol concentration analysis showing the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight, shall mail the person a notification of the test results, a temporary operator's permit extending nonresident operating privileges in this state for twenty days from the date of mailing, and notice of the intent to revoke, suspend, or deny driving privileges in this state, together with the notice provided under section 39-06.1-07 of the procedures available under this chapter. The temporary operator's permit shall be signed and dated by the officer. The law enforcement officer, within five days of issuing the temporary operator's permit, shall forward to the commissioner a sworn report. If the person was issued a temporary operator's permit because of the person's refusal to submit to a test under sections 39-20-01 and 39-20-14, the sworn report shall include information as provided in section 39-20-04. If the person was issued a temporary operator's permit because of the results of a test, the sworn report must show 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, that the person was lawfully arrested, that the person was tested in accordance with section 39-20-01, 39-20-02, or 39-20-03, and that the results of the test show that the person had a blood alcohol concentration of at least ten one-hundredths of one percent by weight.

SECTION 35. A new section to chapter 39-20 of the North Dakota Century Code is hereby created and enacted to read as follows:

Administrative penalty for driving or being in physical control of a vehicle while having certain blood alcohol concentration.

1. After the receipt of a person's operator's license, if taken under section 33 or 34 of this Act, and the sworn 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 arrested person was driving or in physical control of a vehicle while having a blood alcohol concentration of at least ten one-hundredths of one percent by weight, the commissioner shall suspend the person's operator's license as follows:
  - a. For ninety days if the person was arrested for driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance and 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 under this section.
  - b. For one year if the person was arrested for driving or being in actual physical control of a motor vehicle in violation of section 39-08-01 or equivalent ordinance and the person's driving record shows that, within the five years preceding the date of the arrest, the person has previously violated section 39-08-01 or equivalent ordinance or the person's operator's license has previously been suspended under this section.
2. In the suspension of the person's operator's license the commissioner shall give credit for the time the person was without an operator's license after the day of the offense, except that the commissioner may not give credit for the time the person retained driving privileges through a temporary operator's permit

issued under section 33 or 34 of this Act or section 39-20-06.

**SECTION 36. AMENDMENT.** Section 40-18-01 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-18-01. Jurisdiction of municipal judge.** The municipal judge within a city having a population of three thousand or more shall be an attorney licensed to practice law in this state, unless no person so licensed is available in the city, and shall have exclusive jurisdiction of, and shall hear, try, and determine, all offenses against the ordinances of the city. The offices of county judge and municipal judge may not be held by the same person. In a city with a population of less than three thousand, the municipal judge may be, but need not be, an attorney licensed to practice law in this state, nor shall he be required to be a resident of the city in which he is to serve. Notwithstanding any other provision of law, the municipal court or municipal judge has no jurisdiction to hear, try, and determine an offense which would be a violation of section 39-08-01 or equivalent ordinance, if the person charged with the offense has twice previously been convicted of violation of section 39-08-01 or equivalent ordinance within the five years preceding the commission of the offense charged or if the person charged with the offense has three times previously been convicted of violation of section 39-08-01 or equivalent ordinance within the seven years preceding the commission of the offense charged. If such an offense is charged in the municipal court and the municipal judge has notice of violation of section 39-08-01 or equivalent ordinance twice within the five years, or three times within the seven years, preceding the commission of the offense charged, the municipal judge shall dismiss the charge, without prejudice, and direct that the charge be filed against the person in the county court.

**SECTION 37. AMENDMENT.** Section 40-18-12 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**40-18-12. Commitment for violation of city ordinance -** Limitation - Labor in lieu of fine - Diagnosis and treatment of persons convicted while driving under the influence. If the defendant is found guilty of the violation of a municipal ordinance and is committed as provided in section 40-11-12, the governing body may provide by ordinance that he shall be required to the defendant work for the municipality at such labor as his the

defendant's strength and health will permit, not exceeding eight hours in each working day. For that work, the person so imprisoned shall must be allowed for each day, exclusive of his board, ten dollars on account of the fines and costs assessed against him. If a person is convicted under an ordinance prohibiting driving while under the influence of an intoxicating liquor or a narcotic drug, the court may, prior to sentencing, shall refer the person to an approved treatment facility appropriate licensed addiction treatment program for diagnosis addiction evaluation and, if the evaluation indicates that treatment is needed, report to the state highway commissioner in accordance with section 39-08-01. Upon receipt of the results of this diagnosis, the court may impose a sentence as prescribed by the city's ordinances or it may sentence the person to treatment in a facility approved by the state division of alcoholism and drug abuse.

SECTION 38. AMENDMENT. Section 40-18-13 of the 1981 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-18-13. Sentencing alternatives - Suspension of sentence or imposition of sentence. Subject to section 40-05-06, a municipal judge may utilize use the sentencing alternatives provided by section 12.1-32-02 and may suspend any sentence imposed by him the judge imposes or suspend the imposition of any sentence during the good behavior of any person adjudged to have committed an offense, or for other reasonable cause, pursuant to under chapter 12-53, except that a municipal judge may not suspend a sentence or the imposition of sentence for driving a motor vehicle in violation of an operator's license suspension, revocation, or restriction or for a violation of section 39-08-01 or equivalent ordinance if that suspension of sentence or suspension of the imposition of sentence is prohibited under section 39-06-17, section 39-06-42, or chapter 39-08.

SECTION 39. REPEAL. Section 39-06-29.1 of the North Dakota Century Code is hereby repealed."

And renumber the lines and pages accordingly

For the Senate: Sens. Olson, Christensen, Maixner  
For the House: Reps. Conmy, E. Pomeroy, R. Meiers

SB 2373 was placed on the Seventh order of business on the calendar for the succeeding legislative day.

MADAM SPEAKER: Your Conference Committee to which was referred SB 2431 has had the same under consideration and recommends that the HOUSE RECEDE from its amendments as found on pages 1925-1927 of the House Journal and that Engrossed SB 2431 be amended as follows:

- On page 1 of the engrossed bill, line 2, delete the numerals "40-05.1" and insert in lieu thereof the words "39-04, and a new subsection to section 40-05.1-06"
- On page 1 of the engrossed bill, line 3, delete the words "sales, use, motor vehicle fuel, and special fuel" and insert in lieu thereof the word "certain"
- On page 1 of the engrossed bill, line 4, delete the words "only upon approval of the electors" and insert in lieu thereof the words "and fees and authorizing collection agreements"
- On page 1 of the engrossed bill, line 6, delete the words "sales and use"
- On page 1 of the engrossed bill, line 6, after the word "cities" and before the period insert the words "; and to provide an effective date"
- On page 1 of the engrossed bill, after line 8, insert the following new section:

"SECTION 1. A new section to chapter 39-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

Motor vehicle registration fee collection agreements with home rule cities. The governing body of any incorporated city that has adopted the home rule provisions of chapter 40-05.1 and the department may enter into contractual agreements where the department may collect any motor vehicle registration fees assessed by the city. The department shall deposit with the state treasurer all money collected under this section and shall accompany each remittance with a certificate showing the city for which it was collected. The state treasurer, quarterly, shall pay to the city auditors of the several cities the money to which they are entitled under this section. Agreements entered into under this section shall provide for an agreed amount to be allowed the department for services rendered in connection with the collections. Any sums collected for services rendered shall be paid to the state treasurer for deposit in the motor vehicle registration fund."

On page 1 of the engrossed bill, line 9, delete the words "section to chapter 40-05.1 of" and insert in lieu thereof the words "subsection to section 40-05.1-06 of the 1981 Supplement to"

On page 1 of the engrossed bill, delete lines 12 through 14 and insert in lieu thereof the words "To impose registration fees on motor vehicles, or sales and use"

On page 1 of the engrossed bill, line 15, delete the words "vehicle fuel, or special fuel"

On page 1 of the engrossed bill, line 16, after the word "law" insert an underscored period and delete the remainder of the line

On page 1 of the engrossed bill, delete lines 17 through 19

On page 1 of the engrossed bill, line 23, overstrike the words "Sales and use tax" and insert immediately thereafter the word "Tax"

On page 2 of the engrossed bill, line 1, delete the words "and motor vehicle fuel and special fuel taxes"

On page 2 of the engrossed bill, after line 15, insert the following new section:

"SECTION 4. EFFECTIVE DATE. This Act becomes effective on July 1, 1984."

And renumber the lines, sections, and pages accordingly

For the Senate: Sens. Adams (refused to sign), Goodman, Dotzenrod

For the House: Reps. G. Pomeroy, Schneider, Timm

SB 2431 was placed on the Seventh order of business on the calendar for the succeeding legislative day.

The House stood adjourned pursuant to Representative Backes' motion.

CHARLES FLEMING, Chief Clerk