

**Sixtieth Legislative Assembly of North Dakota
In Regular Session Commencing Wednesday, January 3, 2007**

HOUSE BILL NO. 1069
(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to amend and reenact section 39-06-40, paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10, paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10, section 39-06.1-11, subsection 9 of section 39-20-07, and section 39-20-14 of the North Dakota Century Code, relating to unlawful use of a license, points entered against a driving record, addiction evaluation for a temporary restricted license, witnesses for interpretation of a chemical test, and an advisory given before a screening test; and to repeal section 39-16.1-20 of the North Dakota Century Code, relating to seizure of an operator's license.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06-40 of the North Dakota Century Code is amended and reenacted as follows:

39-06-40. Unlawful use of license - Penalty. It is a class B misdemeanor for any person:

1. To display or cause or permit to be displayed or have in possession any canceled, revoked, ~~suspended~~, fictitious, or fraudulently altered operator's license, permit, or nondriver photo identification card;
2. To lend one's operator's license, permit, or nondriver photo identification card to any other person or knowingly permit the use thereof by another;
3. To display or represent as one's own any operator's license, permit, or nondriver identification card not issued to that person;
4. To fail or refuse to surrender to the director upon demand any operator's license, permit, or nondriver photo identification card which has been suspended, revoked, or canceled;
5. To permit any unlawful use of an operator's license, permit, or nondriver photo identification card issued to that person; or
6. To use a false or fictitious name in any application for an operator's license, permit, or nondriver photo identification card or to knowingly make a false statement or to conceal a material fact or otherwise commit a fraud in the application.

The director upon receiving a record of conviction or other satisfactory evidence of the violation of this section shall immediately revoke the person's operator's license, driving privileges, permit, or nondriver photo identification card. The period of revocation is at the discretion of the director, not to exceed six months.

SECTION 2. AMENDMENT. Paragraph 9 of subdivision a of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

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|-----|---|----------|
| (9) | Except as provided
in sections 39-21-44
and 39-21-45.1,
knowingly driving with
defective, nonexistent, or
unlawful equipment | 2 points |
|-----|---|----------|

in violation of
~~subsection 1 of~~
section 39-21-46, or
equivalent ordinances

SECTION 3. AMENDMENT. Paragraph 10 of subdivision b of subsection 3 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- (10) Except as provided in 2 points
paragraph 9 of subdivision a,
knowingly operating an
unsafe vehicle in
violation of ~~subdivision b of~~
~~subsection 2 of~~
section 39-21-46, or equivalent
ordinance

SECTION 4. AMENDMENT. Section 39-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

39-06.1-11. Temporary restricted license - Ignition interlock device.

1. Except as provided under subsection 2, if the director has suspended a license under section 39-06.1-10 or has extended a suspension or revocation under section 39-06-43, upon receiving written application from the offender affected, the director may for good cause issue a temporary restricted operator's license valid for the remainder of the suspension period after seven days of the suspension period have passed.
2. If the director has suspended a license under chapter 39-20, or after a violation of section 39-08-01 or equivalent ordinance, upon written application of the offender the director may issue for good cause a temporary restricted license that 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 director may not issue a temporary restricted license to any offender whose operator's license has been revoked under section 39-20-04 or suspended upon a second or subsequent offense under section 39-08-01 or chapter 39-20, except that a temporary restricted license may be issued for good cause if the offender has not committed an offense for a period of two years before the date of the filing of a written application that must be accompanied by a report from an ~~addiction facility~~ appropriate licensed addiction treatment program or if the offender is participating in the drug court program and has not committed an offense for a period of three hundred sixty-five days before the date of the filing of a written application that must be accompanied by a recommendation from the district court. The director may conduct a hearing for the purposes of obtaining information, reports, and evaluations from courts, law enforcement, and citizens to determine the offender's conduct and driving behavior during the prerequisite period of time. The director may also require that an ignition interlock device be installed in the offender's vehicle.
3. The director may not issue a temporary restricted license for a period of license revocation or suspension imposed under subsection 5 of section 39-06-17; or section 39-06-31, ~~or subsection 3.1 of section 39-06.1-10~~. A temporary restricted license may be issued for suspensions ordered under subsection 7 of section 39-06-32 if it could have been issued had the suspension resulted from in-state conduct.
4. A restricted license issued under this section is solely for the use of a motor vehicle during the licensee's normal working hours and may contain any other restrictions authorized by section 39-06-17. Violation of a restriction imposed according to this section is deemed a violation of section 39-06-17.

SECTION 5. AMENDMENT. Subsection 9 of section 39-20-07 of the North Dakota Century Code is amended and reenacted as follows:

9. Notwithstanding any statute or rule to the contrary, a defendant who has been found to be indigent by the court in the criminal proceeding at issue may subpoena, without cost to the defendant, the person who conducted the chemical analysis referred to in this section to testify at the trial on the issue of the amount of alcohol, drugs, or a combination thereof in the defendant's blood, breath, saliva, or urine at the time of the alleged act. If the state toxicologist, the director of the state crime laboratory, or any employee of either, is subpoenaed to testify by a defendant who is not indigent and the defendant does not call the witness to establish relevant evidence, the court shall order the defendant to pay costs to the witness as provided in section 31-01-16. An indigent defendant may also subpoena the individual who withdrew the defendant's blood by following the same procedure.

SECTION 6. AMENDMENT. Section 39-20-14 of the North Dakota Century Code is amended and reenacted as follows:

39-20-14. Screening tests. Any person who operates a motor vehicle upon the public highways of this state is deemed to have given consent to submit to an onsite screening test or tests of the person's breath for the purpose of estimating the alcohol content of the person's blood upon the request of a law enforcement officer who has reason to believe that the person committed a moving traffic violation or was involved in a traffic accident as a driver, and in conjunction with the violation or the accident the officer has, through the officer's observations, formulated an opinion that the person's body contains alcohol. A person may not be required to submit to a screening test or tests of breath while at a hospital as a patient if the medical practitioner in immediate charge of 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 must be performed by an enforcement officer certified as a chemical test operator by the director of the state crime laboratory or the director's designee and according to methods and with devices approved by the director of the state crime laboratory or the director's designee. The results of such screening test must 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 up to ~~three~~ four years of that person's driving privileges. If such person refuses to submit to such screening test or tests, none may be given, but such refusal is 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 must be available. However, the director must not revoke a person's driving privileges for refusing to submit to a screening test requested under this section if the person provides a sufficient breath, blood, or urine sample for a chemical test requested under section 39-20-01 for the same incident. No provisions of this section may supersede any provisions of chapter 39-20, nor may any provision of chapter 39-20 be construed to supersede this section except as provided herein. For the purposes of this section, "chemical test operator" means a person certified by the director of the state crime laboratory or the director's designee as qualified to perform analysis for alcohol in a person's blood, breath, saliva, or urine.

SECTION 7. REPEAL. Section 39-16.1-20 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixtieth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1069.

House Vote: Yeas 93 Nays 0 Absent 1

Senate Vote: Yeas 44 Nays 1 Absent 2

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2007.

Approved at _____ M. on _____, 2007.

Governor

Filed in this office this _____ day of _____, 2007,

at _____ o'clock _____ M.

Secretary of State