

**Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE BILL NO. 1438
(Representatives D. Johnson, Gruchalla, Hofstad)
(Senators Fiebiger, G. Lee, Oehlke)

AN ACT to create and enact a new section to chapter 39-06.2 of the North Dakota Century Code, relating to a nonresident commercial driver's license; to amend and reenact sections 39-06.2-02, 39-06.2-08, and 39-06.2-09 of the North Dakota Century Code, relating to an application for a nonresident commercial driver's license; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 39-06.2-02 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Alcohol" means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol.
2. "Alcohol concentration" means:
 - a. The number of grams of alcohol per one hundred milliliters of blood;
 - b. The number of grams of alcohol per two hundred ten liters of breath; or
 - c. The number of grams of alcohol per sixty-seven milliliters of urine.
3. "Commercial driver's instruction permit" means a permit issued under subsection 4 of section 39-06.2-07.
4. "Commercial driver's license" means a license issued under this chapter which authorizes an individual to drive a class of commercial motor vehicle.
5. "Commercial driver's license information system" means the information system established under the Commercial Motor Vehicle Safety Act to serve as a clearinghouse for locating information related to the licensing and identification of commercial motor vehicle drivers.
6. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles designed or used to transport passengers or property:
 - a. If the gross combination weight rating is twenty-six thousand one pounds [11794 kilograms] or more provided the towed unit has a gross vehicle weight rating of more than ten thousand pounds [4536 kilograms];
 - b. If the vehicle has a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms] or such lesser rating as determined by federal regulation;
 - c. If the vehicle is designed to transport sixteen or more passengers, including the driver; or

- d. If the vehicle is transporting hazardous materials and is required to be placarded in accordance with 49 CFR part 172, subpart F.
- 7. "Controlled substance" means any substance so classified under section 802(6) of the Controlled Substances Act [21 U.S.C. 802(6)], and includes all substances listed on schedules I through V, of 21 CFR part 1308, as they may be revised from time to time.
- 8. "Conviction" means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.
- 9. "Disqualification" means a withdrawal of the privilege to drive a commercial motor vehicle.
- 10. "Drive" means to drive, operate, or be in physical control of a motor vehicle.
- 11. "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle, or who is required to hold a commercial driver's license.
- 12. "Driver's license" means a license issued by a state to an individual which authorizes the individual to drive a motor vehicle.
- 13. "Drug" means any drug or substance or combination of drugs or substances which renders a person incapable of safely driving, and includes any controlled substance.
- 14. "Employer" means any person, including the United States, a state, or a political subdivision of a state, who owns or leases a commercial motor vehicle, or assigns a person to drive a commercial motor vehicle.
- 15. "Fatality" means the death of a person as a result of a motor vehicle accident.
- 16. "Felony" means any offense under state or federal law which is punishable by death or imprisonment for a term exceeding one year.
- 17. "Foreign jurisdiction" means any jurisdiction other than a state of the United States.
- 18. "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination (articulated) vehicle. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the "gross combination weight rating") is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating or actual weight of the towed unit or units.
- 19. "Hazardous materials" means any material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR part 172 or any quantity of a material listed as a select agent or toxin in 42 CFR part 73.
- 20. "Imminent hazard" means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury, or endangerment.
- 21. "Motor vehicle" means every vehicle that is self-propelled, and every vehicle that is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power and motorized wheelchairs.

22. "Noncommercial motor vehicle" means a motor vehicle or combination of motor vehicles not defined by the term commercial motor vehicle.
23. "Nonresident commercial driver's license" means a commercial driver's license issued by a state to an individual domiciled in a foreign country meeting the requirements of 49 CFR 383.23(b)(1).
24. "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle.
- ~~24.~~ 25. "Serious traffic violation" means a conviction when operating a commercial motor vehicle of:
- a. Excessive speeding, involving a single charge of any speed fifteen miles [24.14 kilometers] per hour or more, above the posted speed limit;
 - b. Reckless driving, as defined under section 39-08-03 or local ordinance, including charges of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property, improper or erratic traffic lane changes, or following the vehicle ahead too closely;
 - c. A violation of any state or local law related to motor vehicle traffic control, other than a parking violation, arising in connection with a fatal accident;
 - d. Driving a commercial motor vehicle without obtaining a commercial driver's license;
 - e. Driving a commercial motor vehicle without a commercial driver's license in the driver's possession. An individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay a fine for such violation, that the individual held a valid commercial driver's license on the date the citation was issued, is not guilty of this offense; or
 - f. Driving a commercial motor vehicle without the proper class of commercial driver's license or endorsement, or both, for the specific vehicle group being operated or for the passengers or type of cargo being transported.
- ~~25.~~ 26. "State" means a state of the United States or the District of Columbia.
- ~~26.~~ 27. "United States" means the fifty states and the District of Columbia.

SECTION 2. AMENDMENT. Section 39-06.2-08 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-08. Application for commercial driver's license.

1. The application for a commercial driver's license or commercial driver's instruction permit must include the following:
 - a. The full name and current mailing address of the ~~person~~ applicant;
 - b. A physical description of the ~~person~~ applicant, including sex, height, weight, and eye and hair color;
 - c. Date of birth;
 - d. The applicant's social security number, unless the application is for a nonresident commercial driver's license and the applicant is a resident of a foreign jurisdiction;
 - e. The ~~person's~~ applicant's signature;

- f. The certifications including those required by 49 CFR part 383.71(a);
 - g. Any other information required by the director; and
 - h. A consent to release driving record information.
2. The application must be accompanied by an application fee of fifteen dollars.
2. 3. When the holder of a commercial driver's license changes the holder's name or mailing address, an application for a duplicate license must be made as provided in section 39-06-18.
3. 4. ~~No person~~ An individual who has been a resident of this state for thirty days may not drive a commercial motor vehicle under the authority of a commercial driver's license issued by another jurisdiction.
4. 5. Any ~~person~~ individual who knowingly falsifies information or certifications required under subsection 1 is subject to suspension, revocation, or cancellation of the ~~person's~~ individual's commercial driver's license for a period of at least sixty consecutive days.

SECTION 3. AMENDMENT. Section 39-06.2-09 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-09. Commercial driver's license.

1. ~~Content of license.~~ The commercial driver's license must be marked "commercial driver's license", and must be, to the maximum extent practicable, tamper proof. It must include the following information:
- a. The name and residential address of the person;
 - b. The person's color photograph;
 - c. A physical description of the person, including sex, height, weight, and eye and hair color;
 - d. Date of birth;
 - e. A distinguishing number assigned to the person which upon request may be a number different from the person's social security number;
 - f. The person's signature;
 - g. The class or type of commercial motor vehicle or vehicles which the person is authorized to drive together with any endorsements or restrictions;
 - h. The name of this state; and
 - i. The dates between which the license is valid.
2. The director may issue a nonresident commercial driver's license pursuant to the limitations of 49 CFR 383 including waiving the social security number requirement. The face of the license must be marked "nonresident" in accordance with 49 CFR 383.153(b).
3. ~~Classifications, endorsements, and restrictions.~~ Commercial driver's licenses may be issued with the following classifications, endorsements, and restrictions; the holder of a valid commercial driver's license may drive all vehicles in the class for which that license is issued and all lesser classes of vehicles except motorcycles. Vehicles for which an endorsement is required may not be driven unless the proper endorsement appears on the license. The requirements of placarding vehicles transporting hazardous materials under

subparagraph b of paragraph 3 of subdivision a and the endorsement required under paragraph 1 of subdivision b do not apply to a person who is the operator of a farm vehicle, provided such vehicle is controlled and operated by a farmer and used to transport hazardous materials in the form of farm supplies within one hundred fifty miles [241.40 kilometers] of the farm, and not used in the operations of a common or contract carrier.

a. Classifications:

- (1) Class A. Any combination of vehicles with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], provided the gross vehicle weight rating of the vehicles being towed is in excess of ten thousand pounds [4535.92 kilograms].
- (2) Class B. Any single vehicle with a gross vehicle weight rating of more than twenty-six thousand pounds [11793.40 kilograms], and any such vehicle towing a vehicle not in excess of ten thousand pounds [4535.92 kilograms].
- (3) Class C. Any single vehicle with a gross vehicle weight rating of twenty-six thousand pounds [11793.40 kilograms] or less or any such vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand pounds [4535.92 kilograms] comprising:
 - (a) Vehicles designed to transport sixteen or more passengers, including the driver; and
 - (b) Vehicles used in the transportation of hazardous materials which requires the vehicle to be placarded under 49 CFR part 172, subpart F.

b. Endorsements and restrictions:

- (1) "H" - authorizes the driver to drive a vehicle transporting hazardous materials.
- (2) "T" - authorizes driving double and triple trailers.
- (3) "P" - authorizes driving vehicles carrying passengers.
- (4) "N" - authorizes driving tank vehicles.
- (5) "X" - combinations of tank vehicles and hazardous material vehicles.
- (6) "S" - authorizes driving a schoolbus.

Other restrictions may be placed upon a commercial driver's license, as provided in section 39-06-17. The applicant shall pay a fee of three dollars for each endorsement.

- ~~3.~~ 4. ~~Applicant record check.~~ Before issuing a commercial driver's license, the director shall obtain driving record information through the commercial driver's license information system, the national driver's register, and from each state in which the person has been licensed.
- ~~4.~~ 5. ~~Notification of license issuance.~~ Within ten days after issuing a commercial driver's license, the director shall notify the commercial driver's license information system of that fact, providing all information required to ensure identification of the person.
- ~~5.~~ 6. ~~Expiration of license.~~ A commercial driver's license issued under this chapter expires in the manner provided for operator's licenses under section 39-06-19.
- ~~6.~~ 7. ~~License renewal procedures.~~ Every person applying for renewal of a commercial driver's license must complete the application form required by subsection 1 of section 39-06.2-08, providing updated information and required certifications. If the applicant wishes to retain

a hazardous materials endorsement, the written test for a hazardous materials endorsement must be taken and passed.

SECTION 4. A new section to chapter 39-06.2 of the North Dakota Century Code is created and enacted as follows:

Nonresident license.

1. The department may issue a nonresident commercial driver's license to an applicant who does not present a social security card as required by section 39-06.2-08 but who otherwise meets the requirements for a nonresident commercial driver's license. A license issued under this subsection is valid only during the period of time of the applicant's authorized stay in the United States. The license may be renewed only upon presentation of valid documentary evidence that the status has been extended. The department shall renew without a skills or knowledge test a nonresident commercial license that has been expired for a duration not longer than one year.
2. The fee for a nonresident commercial driver's license is twenty dollars.

SECTION 5. EMERGENCY. This Act is declared to be an emergency measure.

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 Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1438 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 89 Nays 0 Absent 5

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

Governor

Filed in this office this _____ day of _____, 2009,
at _____ o'clock _____ M.

Secretary of State