

**Transportation Committee
September 21, 2011
Roughrider Room, State Capitol**

North Dakota Century Code, Title 39 Legislative Study

**North Dakota Highway Patrol
James J. Prochniak, Superintendent**

Good afternoon, Mr. Chairman and members of the Transportation Committee. My name is Jim Prochniak; I'm the superintendent of the North Dakota Highway Patrol.

When the North Dakota Highway Patrol looks at Title 39, it sees a document that has served the citizens for a number of years. Some laws obviously longer than others.

Numerous meetings with NDHP staff and DOT staff were held to page through the several hundred page document. As the meetings progressed, many of us began to realize the magnitude of this undertaking.

In coordination with DOT, the NDHP thought the best approach was to identify and prioritize some key sections. Safety of motorists and efficiency of service was given priority.

Included in my testimony is a sampling of those sections and the question/discussion that surrounded that section. In addition to the testimony is a more comprehensive list of various sections and their associated discussions.

Prior to talking about the below sections of law, I would be remiss if I didn't specifically mention section 39-12 dealing with size, width, and height restrictions. I believe change considerations to this section could relieve pressure for the NDHP, DOT, and the motor carrier industry, yet still provide a basis with which to collect fees to offset highway use. A couple of simple examples will paint a clearer picture:

1. We already allow 10% weight increase during certain periods of hauling. Simply allow this to occur during those certain periods without a permit.
2. Ton mile fees are assessed to various loads/configurations depending on what road they travel and for what distance. The issuance of these permits is time consuming, and the formula can be confusing. I suggest a flat incremental rate based on weights for trucks and trailers, work over rigs and cranes, and earth moving equipment, no matter what road they travel.
3. Lastly, consideration to a large annual fee versus many of the various permits they request throughout the year. By establishing an annual fee vs. purchasing numerous permits throughout the year, we will better serve the industry and still collect important fees.

I would now like to go on and briefly discuss some of the other sections/laws to consider for updates.

39-06 Operators' Licenses

Senior Drivers:

Discussion: There is increasing concern related to elderly drivers and licensing. North Dakota law addresses young drivers, but there is nothing covering senior drivers.

Question: Should there be laws addressing needs/limitation of elderly drivers?

Out-of-State Suspended License:

Discussion: An attorney general's opinion dated November 28, 2000 (2000-L-162), states that a driver must have their license suspended or revoked in ND "by action of the director of the North Dakota Department of Transportation." Further it states, "the Legislature has limited...the authority of the director...to suspend the license of an operator only after notice and opportunity for a hearing." This limitation restricts law enforcement's ability to remove habitual offenders who have been identified as such in another state from our roadways.

Question: Did the Legislature intend this result when it enacted its 1991 amendment to N.D.C.C. 39-06-42(1) adding the language 'in any jurisdiction'? The AG's opinion concludes, "Although the order...of another state may provide a basis for the director to take action...such orders do not provide an independent ground upon which to establish a violation of N.D.C.C. 39-06-42..."

39-08 Regulations Governing Operators

Reportable Crash Threshold:

Discussion: The \$1000 threshold that requires a crash to be reported is creating a strain on state and local resources because nearly every crash results in that level of damage.

Question: Should the \$1000 threshold be raised, e.g. doubled?

Minor Animal/Vehicle Crashes:

Discussion: There are numerous animal/vehicle crashes in our state that result in minor damage and involve no liability issues.

Question: Should drivers involved in an animal/vehicle crash such as car-deer be allowed to complete a self-report to avoid the need for law enforcement intervention?

39-09 Speed Restrictions

Speed Fines:

Discussion: The fines in North Dakota are very low in comparison to neighboring states. The fines are not creating much of a deterrent.

Question: Should speeding fines be raised for the number one crash-causing driving behavior in North Dakota?

Speed Fee Structure:

Discussion: The fee structure for speeding is multifaceted. It covers several different highways based on speed limits in addition to construction and school zones.

Question: Should the speeding fee structure be simplified?

39-20 Chemical Test for Intoxication, Implied Consent

Administrative Hearings:

Discussion: The implied consent administrative hearing process is very time consuming. Officers may end up testifying at two separate trials (criminal and administrative) for DUI arrests.

Question: Should the administrative hearing process be incorporated into one court proceeding?

Chemical Test of Driver in Serious Bodily Injury or Fatal Crash NDCC § 39-20-01.1:

Discussion: If faced with a driver who refuses to provide a blood sample following a fatal crash, can officers arrest the suspected driver and forcibly collect a sample? Nothing specifies what happens if a driver refuses to cooperate – should it be a separate felony offense for a driver to refuse to submit to a mandated blood draw which then requires officers to use physical force to obtain a chemical test? Is a search warrant or court order required to forcibly take blood from a driver without a higher level separate offense such as a felony refusal charge?

Question: What is the interpretation of “compel” and when can officers forcibly take blood? Officers are hesitant to take blood without clarification.

39-21 Equipment of Vehicles

Lighting Requirements:

Discussion: The automotive lighting laws could be cleaned up by adopting one federal standard as other states have done (e.g. Texas, Utah, Washington, and Oregon).

Question: Should North Dakota adopt Federal Motor Vehicle Safety Standard 108 to cover automotive lighting, signaling, and reflective devices?

39-26 Abandoned Motor Vehicles

Abandoned Motor Vehicle Fund:

Discussion: Currently, fees that are collected for the abandoned motor vehicle fund go to the Department of Health.

Question: Should a portion of the fees collected go to law enforcement agencies dealing with abandoned vehicles along the state's highways to cover towing and storage fees for vehicles that are never picked up?

Although these two documents alone represent enough in recommendations and/or change, it pales in comparison to the potential for change and updates.

The NDHP believes the best option for a rewrite or clean-up of language is to hire a consultant to review the 39 code. The mere size of this document and the understanding of legal intent simply require more expertise, time, and scrutiny than the NDHP can offer.

Mr. Chairman, members of the committee, this concludes my testimony. I'd be happy to answer any of your questions.

Legislative Study on Title 39

North Dakota Highway Patrol

39-01 Definitions and General Provisions

Definition of Authorized Emergency Vehicle (NDCC § 39-01-02):

Discussion: The emergency vehicle definition applies to the driver rather than the vehicle.

Question: Is any vehicle driven by a peace officer considered an authorized emergency vehicle?

39-03 Highway Patrol

Terminology NDCC § 39-03-05:

Discussion: There are several references to "Patrolman" versus "State Trooper" throughout the NDCC, and wording related to Highway Patrol badges should be updated as follows:

The superintendent shall issue to each state trooper a badge of authority with the seal of this state in the center thereof. The term "North Dakota Highway Patrol" must encircle such seal and ~~below~~ above the same must appear the designation of the position held by the person to whom such badge is issued. At a minimum, each such badge must contain a unit number or rank, ~~or each patrolman shall display otherwise a distinctive serial number.~~ No badge may be issued to any person who is not a duly appointed and acting member of the highway patrol.

Purchasing of Equipment:

Discussion: In order to follow procurement regulations, the Highway Patrol must bid an item "or equal" in a procurement process. This creates difficulties with sensitive items such as vehicle graphics, weapons, and ammunition because the agency must find reasons to exclude low bid "equivalent" items that do not meet our needs. NDDOT Administrative Code allows the Superintendent of the Highway Patrol to set specifications for patrol vehicles without requiring "or equal" language.

Question: Could a statute be added to ease procurement restrictions on the purchase of sensitive or specialized law enforcement equipment which could be clearly defined?

39-05 Title Registration

Title transfer NDCC § 39-05-17(4):

Discussion: This subsection allows the party receiving the title 30 days to transfer it to their name.

Question: Is this 30 days after receiving the title or 30 days after buying the vehicle? The language is unclear.

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Question: Did the Legislature intend this result when it enacted its 1991 amendment to N.D.C.C. 39-06-42(1) adding the language 'in any jurisdiction'?" The AG's opinion concludes, "Although the order...of another state may provide a basis for the director to take action...such orders do not provide an independent ground upon which to establish a violation of N.D.C.C. 39-06-42..."

Electronic Communication Devices:

Discussion: There are now four areas that cover "electronic communications devices" (listed below), but none of them cover a juvenile driver/operator **talking** on the phone while driving who has **never** been issued a permit or license:

- 39-06-04 is a 2 point infraction for holders of class D instruction permits
- 39-06-17(6) is a 4 point \$20 non-moving violation for juveniles with a restricted drivers license
- 39-08-23 is a \$100 moving violation for anyone **texting** while driving
- 39-08-24 is a \$20 moving violation for 16 or 17 year old class D license holders

The electronic communication device offenses included in House Bill 1256 (2011) only affect licenses/permits **issued** after January 1, 2012. Therefore, there are two separate routes to take for offenses and penalties depending on when the license/permit was issued.

Question: Could this part of the statute be revisited to clear up these inconsistencies?

39-06.1 Disposition of Traffic Offenses

Moving and Nonmoving Violations:

Discussion: There are several areas within 39-06.1 that could be reviewed. For example, speeding and care required are not defined as moving violations, nonmoving violation fees are not a set amount but rather "a fee of any amount not to exceed twenty dollars", etc.

Question: Does the committee wish to explore these issues in the study of Title 39? If so, the Highway Patrol has several examples available.

39-08 Regulations Governing Operators

Reportable Crash Threshold:

Discussion: The \$1000 threshold that requires a crash to be reported is creating a strain on state and local resources because nearly every crash results in that level of damage.

Question: Should the \$1000 threshold be raised, e.g. doubled?

Minor Animal/Vehicle Crashes:

Discussion: There are numerous animal/vehicle crashes in our state that result in minor damage and involve no injuries or other potential liability issues.

Question: Should drivers involved in an animal/vehicle crash such as car-deer be allowed to complete a self-report to avoid the need for law enforcement intervention?

Driving Under the Influence:

Discussion: If someone is driving under the influence and gets in a crash, they can flee the scene and report it after they sober up for a decreased violation of failing to report a crash. Also, there is currently an increased penalty for someone driving under the influence with a minor occupant in the vehicle, but the driver must be 21 years or older.

Question: Should leaving the scene of a reportable crash be more serious than getting arrested for a DUI, and should drivers under 21 years of age who get arrested for DUI with a minor occupant in their vehicle face an increased penalty?

39-09 Speed Restrictions

Speed Fines:

Discussion: The fines in North Dakota are very low in comparison to neighboring states. The fines are not creating much of a deterrent.

Question: Should speeding fines be raised for the number one crash-causing driving behavior in North Dakota?

Speed Fee Structure:

Discussion: The fee structure for speeding is multifaceted. It covers several different highways based on speed limits in addition to construction and school zones.

Question: Should the speeding fee structure be simplified?

39-10 General Rules of the Road

Discussion: Guidelines are needed to better regulate traffic at various types of intersections. For example, should a four-way stop be regulated by the "first to stop is the first to go" rule as recommended in the state's Rules of the Road manual, is it legal to enter an intersection on a yellow light even though it's not clear to exit, etc.?

Question: Does the committee wish to explore these issues in the study of Title 39? If so, the Highway Patrol has several examples available.

39-16.1 Proof of Financial Responsibility

Discussion: The thresholds in this chapter were last updated in 1985. The insurance amounts listed could be updated simply due to inflation. For example, \$25,000 in 1985 would be closer to \$50,000 today. Other similar sections include 39-16-05(3), 39-16.1-05, 39-16.1-11(2.b.), and 39-16.1-15(1).

Question: Should the insurance limits be increased?

39-20 Chemical Test for Intoxication, Implied Consent

Administrative Hearings:

Discussion: The implied consent administrative hearing process is very time consuming. Officers may end up testifying at two separate trials (criminal and administrative) for DUI arrests.

Question: Should the administrative hearing process be incorporated into one court proceeding?

Chemical Test of Driver in Serious Bodily Injury or Fatal Crash NDCC § 39-20-01.1:

Discussion: If faced with a driver who refuses to provide a blood sample following a fatal crash, can officers arrest the suspected driver and forcibly collect a sample? Nothing specifies what happens if a driver refuses to cooperate – should it be a separate felony offense for a driver to refuse to submit to a mandated blood draw which then requires officers to use physical force to obtain a chemical test? Is a search warrant or court order required to forcibly take blood from a driver without a higher level separate offense such as a felony refusal charge?

Question: What is the interpretation of “compel” and when can officers forcibly take blood? Officers are hesitant to take blood without clarification.

39-21 Equipment of Vehicles

Equipment Requirements:

Discussion: There are several equipment-related areas that could use clarification. For example, what is excessive or unusual noise as it relates to mufflers, should modified motor vehicle laws apply to vehicles 10,000 pounds or less rather than a *registered* weight of 7,000 pounds or less?

Question: Does the committee wish to explore these issues in the study of Title 39? If so, the Highway Patrol has several examples available.

Lighting Requirements:

Discussion: The automotive lighting laws could be cleaned up by adopting one federal standard as other states have done (e.g. Texas, Utah, Washington, and Oregon).

Question: Should North Dakota adopt Federal Motor Vehicle Safety Standard 108 to cover automotive lighting, signaling, and reflective devices?

39-24 Regulation and Registration of Snowmobiles

Snowmobile Insurance:

Discussion: Liability insurance is required on snowmobiles used on a public trail system.

Question: Should snowmobiles driving in the highway right-of-way also be required to carry liability insurance?

39-26 Abandoned Motor Vehicles

Abandoned Motor Vehicle Fund:

Discussion: Currently, fees that are collected for the abandoned motor vehicle fund go to the Department of Health.

Question: Should a portion of the fees collected go to law enforcement agencies dealing with abandoned vehicles along the state's highways to cover towing and storage fees for vehicles that are never picked up?