

**Sixty-second Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 4, 2011**

HOUSE BILL NO. 1103
(Transportation Committee)
(At the request of the Department of Transportation)

AN ACT to create and enact a new subsection to section 39-01-01 and section 39-06-01.2 of the North Dakota Century Code, relating to definitions and anatomical gifting; and to amend and reenact subsection 1 of section 39-06-01, subsection 1 of section 39-06-01.1, subsection 1 of section 39-06-03.1, subsection 2 of section 39-06-07, section 39-06-07.2, subsection 1 of section 39-06-14, sections 39-06-24, 39-06-35, 39-06-36, and 39-06-40, subsection 3.1 of section 39-06.1-10, subsection 2 of section 39-06.2-10, sections 39-06.2-10.3 and 39-10.2-06, subsection 2 of section 39-16.1-07, subsection 2 of section 39-27-05, and subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code, relating to nondriver photo identification, operator's licenses, and motorcycle safety and body requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 39-01-01 of the North Dakota Century Code is created and enacted as follows:

"Licensed health care provider" means doctor of medicine, doctor of osteopathy, doctor of chiropractic, optometrist, psychologist, advanced practice registered nurse, or physician assistant who is licensed, certified, or registered in accordance with laws and regulations in this or another state.

SECTION 2. AMENDMENT. Subsection 1 of section 39-06-01 of the North Dakota Century Code is amended and reenacted as follows:

1. A person, unless expressly exempted in this section, may not drive any motor vehicle on a highway or on public or private areas to which the public has a right of access for vehicular use in this state unless 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. A person may not receive an operator's license unless and until that person surrenders to the director all operator's licenses and permits issued to the person by any jurisdiction. When a license issued by another jurisdiction is surrendered, the director shall notify the issuing jurisdiction of its surrender. A person may not have more than one valid operator's license at any time.

SECTION 3. AMENDMENT. Subsection 1 of section 39-06-01.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall cancel the permit or license to operate a motor vehicle of an individual who has committed acts resulting in an accumulated point total in excess of five points as provided for a violation under section 39-06.1-10 or has committed an alcohol-related offense or a drug-related offense while operating a motor vehicle, if:
 - a. The acts or offenses were committed while the individual was a minor; and
 - b. The individual admitted the violation, was found to have committed the violation by the official having jurisdiction, or pled guilty to, was found guilty of, or adjudicated to have committed the offense.

SECTION 4. Section 39-06-01.2 of the North Dakota Century Code is created and enacted as follows:

39-06-01.2. Anatomical gifting.

The application for nondriver photo identification cards and driver's licenses issued to operators must include a statement making an anatomical gift and provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card or license unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.

SECTION 5. AMENDMENT. Subsection 1 of section 39-06-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The director shall issue a nondriver color photo identification card to any North Dakota resident who fulfills the requirements of this section. An application for an identification card must be made on a form furnished by the director. Within thirty days from receipt of a complete application that includes the applicant's social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, the director shall determine whether to issue and, if appropriate, issue a nondriver photo identification card to an applicant. ~~The application must provide for the voluntary identification of the applicant as a donor under chapter 23-06.6. If requested on the identification card application, the identification card issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the identification card unless a duplicate card is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors.~~ If the person is under the age of eighteen or at least the age of eighteen and under the age of twenty-one, the photo must be against the same color background required on a motor vehicle operator's license for an operator of that age. Subject to subsection 1 of section 39-06-19, identification cards expire eight years from the date of issue and may be renewed. The application must contain such other information as the director may require to improve identity security. The director may require an applicant for an identification card to provide a social security card and proof of residence address.

SECTION 6. AMENDMENT. Subsection 2 of section 39-06-07 of the North Dakota Century Code is amended and reenacted as follows:

2. Every application must state the full name, date of birth, sex, social security number, unless the applicant is a nonimmigrant who is not eligible for a social security number, residence and mailing address, and briefly describe the applicant. In signing the application the applicant is deemed to have certified that all information contained on the application is true and correct. The application must be accompanied by the proper fee. ~~The application must also provide for the voluntary identification of the applicant as a donor under the provisions of chapter 23-06.6.~~ The application must contain such other information as the director may require to improve identity security. The director may require an applicant for a license or instruction permit to provide a social security card and proof of residence address.

SECTION 7. AMENDMENT. Section 39-06-07.2 of the North Dakota Century Code is amended and reenacted as follows:

39-06-07.2. Medical advice - Use by director.

1. The director is authorized to seek professional medical advice from ~~any physician or optometrist authorized to practice in this state~~ a licensed health care provider and to use that

advice in decisions made by the director in regard to the issuance, renewal, suspension, revocation, or cancellation of driver's licenses ~~pursuant to~~under this chapter. The advice may be received in any manner deemed advisable by the director or the director's authorized agent.

2. In addition to advice sought and received ~~pursuant to~~under subsection 1, the director may consider information and advice received from an individual applicant's or driver's personal ~~physician or optometrist~~licensed health care provider. Any examination and report requested by the applicant or driver or required to be taken and provided by the director ~~pursuant to~~under this chapter must be at the expense of the applicant or driver.
3. Any ~~physician or optometrist~~licensed health care provider providing advice to the director or director's authorized agent ~~pursuant to~~under subsection 1 ~~shall~~does not incur ~~no~~any liability for any opinion, recommendation, or advice provided.
4. Advice and information received by the director or director's authorized agent ~~pursuant to~~under subsection 1 which relates to an individual applicant or driver is for the confidential use of the director or director's authorized agent in making decisions on the individual's qualifications as a driver, and the information may not be divulged to any person or used in evidence in any trial or proceeding except in matters concerning the individual's qualifications to receive or retain a driver's license.
5. General advice and information received by the director or director's authorized agent ~~pursuant to~~under this section, in addition to other sources of information, may be used by the director in the adoption of administrative rules concerning medical criteria for driver licensing.

SECTION 8. AMENDMENT. Subsection 1 of section 39-06-14 of the North Dakota Century Code is amended and reenacted as follows:

1. The director, upon payment of a ten dollar fee, shall issue to every qualified applicant an operator's license as applied for in the form prescribed by the director. The license must bear a distinguishing number assigned to the licensee, a color photograph of the licensee, the full name, date of birth, residence address, and a brief description of the licensee, and either a facsimile of the signature of the licensee or a space upon which the licensee shall write the licensee's usual signature. The director may not issue a distinguishing number that is, contains, can be converted to, or is an encrypted version of the applicant's social security number. If the licensee is under the age of eighteen, the photograph must be against a color border or background that is different from the color used for other licensees. If the licensee is at least the age of eighteen and is under the age of twenty-one, the photograph must be against a color border or background that is different from the color used for other licensees. ~~If requested on the license application, the license issued by the director must include a statement making an anatomical gift under chapter 23-06.6. Voluntary identification of the applicant as a donor under chapter 23-06.6 also may be completed by an online registry approved by the director. If the applicant's donor intention is made by the online registry, the intention must be recorded on the applicant's record. The intention is not required on the license unless a duplicate license is obtained or at the time of renewal. The department may not be held civilly or criminally liable for any act or omission in implementing and maintaining the online registration of donors. No license is valid until it has been signed by the licensee with the licensee's usual signature. For purposes of verification, an officer may require the licensee to write the licensee's signature in the presence of the officer. The director may adopt rules, pursuant to chapter 28-32, relating to the manner in which photographs are to be obtained and placed on operator's licenses. The photograph may be produced by digital imaging or other electronic means and is not a public record.~~

SECTION 9. AMENDMENT. Section 39-06-24 of the North Dakota Century Code is amended and reenacted as follows:

39-06-24. Authority to cancel licenses.

The director shall cancel any operator's license, permit, or nondriver photo identification card upon determining that the person is not entitled to the issuance of the document under the laws of this state or that said person failed to give the required or correct information on the application or the fee was in the form of an insufficient fund or no-account check or a credit or debit card in which the transaction was canceled by the applicant before the department received correct payment. The making of a false statement in any application for an operator's license, permit, or nondriver photo identification card, concerning the applicant's age or the prior loss of driving privileges through a cancellation, suspension, revocation, or similar sanction in any state, is grounds for the director to cancel any document or privilege issued on the basis of the application.

SECTION 10. AMENDMENT. Section 39-06-35 of the North Dakota Century Code is amended and reenacted as follows:

39-06-35. Period of suspension.

When the period of suspension 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 director a reinstatement fee of fifty dollars, or twenty-five dollars if the suspension was the result of a suspension under subsection 4, 5, or 7 of section 39-06-03 or subsection 2 of section 39-06-32, or one hundred dollars if the suspension was the result of a violation under section 39-08-01 or chapter 39-20, and, if applicable, until compliance with subsection 3.1 of section 39-06.1-10. Upon payment of the reinstatement fee the license must be returned to the operator. If payment of the reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. 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 11. AMENDMENT. Section 39-06-36 of the North Dakota Century Code is amended and reenacted 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 is not 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 director may not then issue a new license unless and until the director 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 director a revocation reinstatement fee of fifty dollars, or one hundred dollars if the revocation was imposed for violation of subsection 5 of section 39-06-17, section 39-06-31, 39-06-43, or 39-20-04, in addition to any license renewal fee, for issuance of a new license. If payment of a reinstatement fee is submitted with a check or a credit or debit card and the operator stops payment on the transaction, the suspension will be reimposed until proper payment has been made to the director. 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 12. 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, 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 within five days, 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 13. AMENDMENT. Subsection 3.1 of section 39-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

- 3.1. a. If the director is informed by a court that a person has been convicted of violating section 39-08-01, or equivalent ordinance, the director, subject to the offender's opportunity for hearing under subsection 1, ~~may not restore the operator's license to the offender~~ shall suspend that person's driving privileges until the offender furnishes to the director the written statement of the counselor or instructor of an appropriate licensed addiction treatment program that the offender does not require either an education or treatment program or that the offender has physically attended the prescribed program and has complied with the attendance rules. The director shall send notice to the offender informing the offender of the provisions of this subsection.
- b. 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 director may restore driving privileges to the offender~~ driving privileges shall be suspended and can be restored only after that person has completed addiction treatment through an appropriate licensed addiction treatment program and has had no alcohol-related or drug-related offense for two consecutive years after completion of treatment.

SECTION 14. AMENDMENT. Subsection 2 of section 39-06.2-10 of the North Dakota Century Code is amended and reenacted as follows:

2. A person is disqualified for life if convicted of two or more violations of any of the offenses specified in subsection 1, 7, 9, or 11, or any combination of those offenses, arising from two or more separate incidents. Only offenses committed while operating a commercial motor vehicle after July 1, 1989, may be considered in applying this subsection. Only offenses committed while operating a noncommercial motor vehicle after August 1, 2003, may be considered in applying this subsection.

SECTION 15. AMENDMENT. Section 39-06.2-10.3 of the North Dakota Century Code is amended and reenacted as follows:

39-06.2-10.3. Action following test result for a resident driver.

If a person submits to a test under section 39-06.2-10.2 and the test shows that person to have an alcohol concentration of at least four one-hundredths of one percent by weight at the time of the performance of a chemical test within two hours after the driving or being in actual physical control of a commercial motor vehicle, the following procedures apply:

1. When a breath sample test result derived under section 39-20-07 reveals a resident driver to have an alcohol concentration of at least four one-hundredths of one percent by weight, the law enforcement officer shall immediately ~~take possession of the person's commercial driver's license. The law enforcement officer shall~~ issue the driver an out-of-service order as provided for in section 39-06.2-10.9. If the driver then has valid driving privileges, the law enforcement officer must issue to the driver a temporary driver's permit, in accordance with section 39-06.2-10.8.
2. If a test administered under section 39-06.2-10.2 was by a urine or blood sample 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 sample by the director of the state crime laboratory or the director's designee showing that person had an alcohol concentration of at least four one-hundredths of one percent by weight, either proceed in accordance with subsection 1 during that person's reappearance within the officer's jurisdiction or notify a law enforcement agency having jurisdiction where the person lives. On that notification, that law enforcement agency shall immediately ~~take possession of the person's North Dakota commercial driver's license or permit and, within twenty four hours, forward it and a copy of the temporary driver's permit to the halting officer. The law enforcement agency shall also, on taking possession of the person's commercial driver's license,~~ issue to that person a temporary driver's permit according to section 39-06.2-10.8.
3. The halting officer, within five days of the issuance of the temporary driver's permit, shall forward to the director a certified written report in the form required by the director and the person's commercial driver's license taken under subsection 1 or 2. If the person was issued a temporary driver's permit because of the results of a test, the report must show that the officer had reasonable grounds to believe the person had been driving or was in actual physical control of a commercial motor vehicle while in violation of section 39-06.2-10.1, that the person was lawfully detained, that the person was tested for alcohol concentration under this chapter, and that the results of the test show that the person had an alcohol concentration of at least four one-hundredths of one percent by weight. In addition to the commercial driver's license and report, the law enforcement officer must forward to the director a certified copy of the operational checklist and test records of a breath test and a copy of the certified copy of the analytical report for a blood or urine test for all tests administered at the direction of the officer.

SECTION 16. AMENDMENT. Section 39-10.2-06 of the North Dakota Century Code is amended and reenacted as follows:

39-10.2-06. Equipment for motorcycle riders.

1. No person under the age of eighteen years may operate or ride upon a motorcycle unless ~~protective headgear, which complies with standards established by the department,~~ a safety helmet meeting United States department of transportation standards is being worn on the head of the operator and rider, except when participating in a lawful parade. If the operator of a motorcycle is required to wear ~~protective headgear~~ a safety helmet, any passenger must also wear ~~protective headgear~~ a safety helmet regardless of the age of the passenger.
2. This section does not apply to persons riding within an enclosed cab or on a golf cart.

3. No person may operate a motorcycle if a person under the age of eighteen years is a passenger upon that motorcycle and is not wearing ~~protective headgear~~ safety helmet as provided in subsection 1.

SECTION 17. AMENDMENT. Subsection 2 of section 39-16.1-07 of the North Dakota Century Code is amended and reenacted as follows:

2. If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for any offense requiring the revocation of license, driving or being in actual physical control of a vehicle while under the influence in violation of section 39-08-01 or equivalent ordinance, or operating a motor vehicle upon the highway while the person's license or privilege to drive is under suspension for a violation requiring a license or privilege to drive suspension of at least ninety-one days or revocation, the license or driving privilege must ~~remain~~ be suspended or revoked and no license may be issued or returned to the person, unless the person gives and maintains proof of financial responsibility.

SECTION 18. AMENDMENT. Subsection 2 of section 39-27-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Tires on two-wheel motorcycles and the ~~front~~ single tire on the front or rear of a three-wheel motorcycle must have a load capacity rating at least equal to their respective gross axle weight ratings. Each tire on the front or rear axle of a three-wheel motorcycle must have a load capacity rating at least equal to one-half the front or rear axle gross axle weight rating.

SECTION 19. AMENDMENT. Subsections 2 and 5 of section 39-27-06 of the North Dakota Century Code are amended and reenacted as follows:

2. The rear wheel of a two-wheel motorcycle must track behind the front wheel within one inch [2.54 centimeters] with both wheels in a vertical plane when the vehicle is operating on a straight course. On a three-wheel motorcycle, the ~~two wheels mounted on the rear axle must have a wheel track distance no less than thirty inches [76.2 centimeters] and the midpoint of the rear wheel track distance must be within one inch [2.54 centimeters] of the front~~ midpoint of the front or rear wheel track distance must be within one inch [2.54 centimeters] of the single front or single rear wheel track when the vehicle is proceeding on a straight course. The vehicle must be equipped with an adjustment feature that will provide proper wheel tracking.
5. Handlebars must be of sturdy construction, adequate in size to provide proper leverage for steering, and capable of withstanding a minimum force of one hundred pounds [45.36 kilograms] applied to each handgrip in any direction. Handlebar grips may not be located above the shoulder height of the seated operator ~~and must be capable of vertical adjustment.~~ The handlebars must provide a minimum of eighteen inches [45.72 centimeters] between grip after final assembly.

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-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1103.

House Vote: Yeas 92 Nays 0 Absent 2

Senate Vote: Yeas 47 Nays 0 Absent 0

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2011.

Approved at _____ M. on _____, 2011.

Governor

Filed in this office this _____ day of _____, 2011,

at _____ o'clock _____ M.

Secretary of State